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2. This, altho' it be not properly homicide, nor punishable as a crime, yet is taken notice of by the law, as far as the nature of the thing will bear, in order to raise the greater abhorrence of murder: And the unhappy instrument or occasion of such death, is called a *deodand (deo dandum)*, and forfeited to the king, to be disposed of to pious uses by the king's almoner; as also are all such weapons whereby one man kills another. 3 *Inst.* 57. 1 *Haw.* 66.

3. It seems clearly settled, contrary to the former opinions, that a horse, or the like, killing an *infant* within the age of discretion, is as much forfeited as if he were of age. 1 *Haw.* 66.

4. Also, it was anciently holden, that things *fixed to a freehold*, as the wheel of a mill, or a bell hanging in the steeple, may be deodands; but by the latter resolutions they cannot, unless they were severed before the accident happened 1 *Haw.* 66.

5. It is agreed by all, that a *ship* in salt water, from which a man falls and is drowned, is not forfeited, because persons at sea are continually exposed to so many perils, that the law imputes not such misfortunes to the ship. Also it seems clear, that when a man riding on a horse over a river, is drowned thro' the violence of the stream, the horse is not forfeited, because not that, but the water caused his death. But it is said, that a ship, by a fall from which a man is drowned, in the fresh water, shall be forfeited, but not the merchandize therein; because they no way contribute to his death. And by the same reason it seems, that if a man riding on the shafts of a waggon, fall to the ground and break his neck, the horses and waggon only are forfeited, and not the loading, because it no way contributed to his death; for which cause, where a thing not in motion causes a man's death, that part thereof only, which is the immediate cause, is forfeited. As where one climbing upon the wheel of a cart, while it stands still, falls from it, and dies of the fall, the wheel only is forfeited: But if he had been killed by a bruise from one of the wheels being in motion, the loading also would have been forfeited, because the weight thereof made the hurt the greater; and it is a general rule, that wherever the thing which is the occasion of a man's death is in motion at the time, not only that part thereof which immediately wounds him, but all things which move together with it, and help to make the wound more dangerous, are forfeited also. 1 *Haw.* 66.

6. Thus a cart met a waggon loaded upon the road, and the cart endeavouring to pass by the waggon, was driven upon an high bank and overturned, and threw a person that was in the cart, just before the wheels of the waggon, and the waggon ran over him and killed him; it was resolved in this case, that the cart, waggon, loading, and all the horses were deodands, because they all moved to the death. 1 *Salk.* 220.

7. If a weight of earth fall upon a worker in a mine, and kill him; the weight of earth is forfeit; and not the whole mine. 1 *H. H.* 420.

8. In all these cases, if the party wounded die not of his wound, within a year and a day after he received it, there shall be nothing forfeited; for the law doth not look on such a wound as the cause

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of a man's death, after which he lives so long: But if the party die within that time, the forfeiture shall have relation to the wound given, and cannot be saved by any alienation or other act whatsoever in the mean time. 1 *Haw.* 67.

9. However nothing can be forfeited as a deodand, nor seized as such, till it be found by the coroner's inquest to have caused a man's death; but after such inquisition, the sheriff is answerable for the value of it, and may levy the same on the town where it fell, and therefore the inquest ought to find the value of it. 1 *Haw.* 67.

10. And if the coroner omits his duty in this case, the inquisition may be made by the commissioners of gaol delivery, oyer, and terminer, or of the peace. 1 *H. H.* 419.

Dice. See Stamps.

Dissenters.

I. Protestant dissenters exempted from certain penalties by the act of toleration.

II. Protestant dissenters intitled to certain privileges by the act of toleration.

III. Laws against dissenters not altered by the act of toleration.

IV. Laws relating to protestant dissenters made since the act of toleration.

I. Protestant dissenters exempted from certain penalties by the act of toleration.

1. As *to all protestant dissenters in general.* Against whom the seven following statutes have been enacted:

(1) By the 1 *El. c.* 2. *s.* 14. Every person not having reasonable excuse, shall resort to their parish church or chapel, or upon reasonable let thereof, to some usual place where common prayer shall be used, on every *Sunday* and holiday; on pain of punishment by the censures of the church, or of forfeiting for every offence 12 *d.*

(2) By the 23 *El. c.* 1. Every person above the age of 16, who shall not repair to some church, or chapel, or usual place of common prayer, shall forfeit for every month 20 *l.* And if he shall forbear for 12 months he shall be bound to the good behaviour till he conform.

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And if any perſon ſhall keep a ſchoolmaſter, who ſhall not repair to church, or be allowed by the biſhop, he ſhall forfeit 10 *l.* a month, and the ſchoolmaſter ſhall be impriſoned for a year.

(3) By the 29 *El. c.* 6. Every offender in not repairing to church, having been once convicted, ſhall without any other indictment or conviction, pay half yearly into the exchequer 20 *l.* for every month afterwards, until he conform; which if he ſhall omit to do, the king may ſeize all his goods, and two parts of his lands.

(4) And by 1 *J. c.* 4. The king may refuſe the 20 *l.* a month, and take two parts of the land, at his option.

And any perſon retaining or keeping in his houſe any ſervant, or other, who ſhall not repair to church, ſhall forfeit 10 *l.* a month.

(5) And by the 1 *J. c.* 5. No recuſant in not repairing to church, being convicted thereof, ſhall enjoy any publick office, or ſhall practiſe law or phyſick, or be executor, adminiſtrator, or guardian.

And if any perſons ſhall ſend their children over ſeas for education, they ſhall forfeit 100 *l.* and ſuch child be diſabled to inherit, or take any benefit by gift, conveyance, or deviſe.

(6) And by the 35 *El. c.* 1. If any perſon refuſing to repair to church, ſhall be preſent at any aſſembly, meeting, or conventicle, under pretence of any exerciſe of religion, he ſhall be impriſoned till he conform; and if he ſhall not conform in three months, he ſhall abjure the realm; which if he ſhall refuſe to do, or after abjuration ſhall not go, or ſhall return without licence, he ſhall be guilty of felony without benefit of clergy. And whether he ſhall abjure or not, he ſhall forfeit his goods, and ſhall forfeit his lands during life.

(7) And by the 22 *C.* 2. *c.* 1. If any perſon, being ſixteen years of age, ſhall be preſent at any conventicle or meeting, under pretence of any exerciſe of religion, in other manner than according to the liturgy and practice of the church of *England*, at which there ſhall be five perſons or more aſſembled, beſides thoſe of the houſhold, if it be in an houſe where there is a family; or if it be in a houſe, field, or place, where there is no family, then where any five perſons or more are ſo aſſembled,—— every juſtice of the peace before whom information ſhall be made, ſhall (on pain of 100 *l.* half to the informer) on proof by confeſſion, or oath of two witneſſes, or the notorious evidence of the fact, make a record thereof (which ſhall be afterwards certified to the ſeſſions), which record ſhall be a full conviction: Whereupon he ſhall impoſe upon every offender a fine of 5 *s.* for the firſt offence, and for every other offence 10 *s.* to be levied by diſtreſs and ſale of the goods of the offender, or in caſe of the poverty of ſuch offender, upon the goods of any other perſon then convicted of the like offence, ſo as the ſum to be levied on any one perſon in caſe of the poverty of other offenders amount not in the whole to above 10 *l.* on occaſion of any one meeting; one third to the king, one third to the poor, and one third to the informer and to ſuch perſons as the juſtice ſhall ap-

point, having regard to their diligence in diſcovering, diſperſing, and puniſhing of the ſaid conventicles.

And every perſon who ſhall ſuffer any ſuch meeting in his houſe, outhouſe, barn, or backſide, ſhall forfeit 20 *l.* in like manner; and in caſe of his inability, it ſhall be levied on the goods of ſuch perſons who ſhall be convicted of being preſent.

If the penalty exceeds 10 *l.* an appeal lies to the ſeſſions. And if the party is there found guilty by a jury, he ſhall pay treble coſts. And no other court whatſoever ſhall intermeddle, but the quarter ſeſſions only.

And juſtices and conſtables may with what force they think fit, upon refuſal to open, break open doors where they ſhall be informed ſuch conventicle is, and take the offenders into cuſtody. And on certificate from any juſtice of the peace of his particular information or knowledge of ſuch unlawful meeting, and that he is not able, with ſuch aſſiſtance as he can get, to ſuppreſs the ſame; any commiſſioned officer of the militia, or other his majeſty's forces, with ſuch troops or companies of horſe and foot, and alſo the ſheriff, and other miniſters of juſtice, with ſuch other aſſiſtance, as they ſhall think meet, or can get in readineſs with the ſooneſt, ſhall repair to the place, and by the beſt means they can, ſhall diſſolve, diſſipate, and prevent ſuch meeting, and take the offenders into cuſtody.

Thus ſtood the laws at the revolution.

Now by the aforeſaid act of toleration, made in the firſt year of *William* and *Mary*, it is enacted, that neither the ſtatutes aforeſaid, nor any other made againſt papiſts and popiſh recuſants (except the ſtatutes of the 25 *C.* 2. *c.* 2. and the 30 *C.* 2. *ſt.* 2. *c.* 1. hereafter mentioned) ſhall extend to any perſon diſſenting from the church of *England*, who ſhall be qualified in the manner following;

(1) They ſhall at the general ſeſſions of the peace, take the oaths of allegiance, ſupremacy, and abjuration (1 *G.* *c.* 13).

(2) They ſhall alſo there make and ſubſcribe the declaration of the 30 *C.* 2. *ſt.* 2. *c.* 1. againſt popery.

(3) The place of meeting ſhall be certified to the biſhop of the dioceſe, or to the archdeacon of the archdeaconry, or to the juſtices of the peace at the general or quarter ſeſſions, and regiſtred in the ſaid biſhop's or archdeacon's court, or recorded at ſuch ſeſſions. And the regiſter, or clerk of the peace, ſhall regiſter or record the ſame, and give certificate thereof to any who ſhall demand it, for which no more ſhall be taken than ſixpence.

(4) The doors of the place where they meet ſhall not, during ſuch time of their meeting, be locked, barred, or bolted.

(5) They ſhall not in writing deny the doctrine of the bleſſed trinity.

2. What hath hitherto been obſerved, regardeth all proteſtant diſſenters in general. There are beſides certain other laws, which concern

concern their *teachers and preachers only*. Which are theſe three that follow;

(1) By the 17 *C.* 2. *c.* 2. No perſon, who ſhall take upon him to teach or preach in any meeting or conventicle, under pretence of any exerciſe of religion, ſhall, unleſs only in paſſing upon the road, or unleſs required by legal proceſs, come within five miles of a city, town corporate, or borough; nor ſhall be ſchoolmaſter, or take any boarders or tablers to be inſtructed by himſelf or any other, without taking an oath of allegiance therein mentioned, on pain of 40 *l.* one third to the king, one third to the poor, and one third to him who ſhall ſue in the courts at *Weſtminſter*, aſſizes, or ſeſſions. And two juſtices, on oath of the offence, may commit them for ſix months.

(2) And by the 22 *C.* 2. *c.* 1. If any perſon ſhall take upon him to preach or teach in any meeting or conventicle, in other manner than according to the practice of the church of *England*, he ſhall forfeit for the firſt offence 20 *l.* and for every other offence 40 *l.* And if he be a ſtranger, or in the judgment of the juſtice of the peace before whom he is convicted, unable to pay, it may be levied on the goods of any perſon preſent.

(3) And by the 13 & 14 *C.* 2. *c.* 4. *ſ.* 14. No perſon ſhall preſume to conſecrate and adminiſter the ſacrament before he be ordained prieſt, according to the form and manner of the church of *England*.

Now by the aforeſaid act of toleration, it is provided, that no perſon diſſenting from the church of *England*, in holy orders, or pretended holy orders, or pretending to holy orders, nor any preacher or teacher of any congregation of diſſenting proteſtants, ſhall be liable to any of the aforeſaid penalties, who ſhall be qualified as follows:

(1) He ſhall at the ſeſſions take the oaths aforeſaid.

(2) He ſhall there make and ſubſcribe the declaration of the 30 *C.* 2. *ſt.* 2. *c.* 1.

(3) He ſhall there alſo declare his approbation of, and ſubſcribe the 39 articles, except the 34th, 35th and 36th (concerning the quality, examination, and ſubſcription of ſuch as are to be made miniſters), and except theſe words of the 20th article, *viz.* [*the church hath power to decree rites or ceremonies, and authority in controverſies of faith, and yet*]: All which ſhall be entred of record in court; for which the clerk of the peace ſhall have 6 *d.* and no more.

(4) The place for worſhip ſhall be certified as before.

(5) The doors of the place, where he ſhall preach or teach, ſhall not be locked, barred, or bolted.

(6) He ſhall not deny, in his preaching or teaching, the doctrine of the bleſſed trinity.

3. Furthermore, there are beſides the aforeſaid general laws, certain other penal laws, affecting the *quakers* in particular: namely, theſe two;

(1) By the 5 *El. c.* 1. If any perſon ſhall refuſe to take the oaths of allegiance and ſupremacy, duly tendred, he ſhall incur a *præmunire.*

(2) And by the 13 & 14 *C.* 2. *c.* 1. If any perſon, who ſhall maintain that the taking of an oath is unlawful, ſhall refuſe an oath duly tendred, he ſhall forfeit a ſum not exceeding 5 *l.* for the firſt offence, 10 *l.* for the ſecond, and for the third ſhall abjure the realm or be tranſported.

But now by the act of toleration, quakers ſhall be diſcharged of the penalties of theſe laws, and of all others made againſt popiſh recuſants, or proteſtant non-conformiſts, and ſhall enjoy all other benefits, under the like limitations, which any other diſſenters enjoy, on their qualifying themſelves in the ſame manner as other diſſenters; except that inſtead of the oaths at ſeſſions, they ſhall be allowed to make and ſubſcribe a declaration of fidelity, and take the effect of the abjuration oath, and to ſubſcribe a profeſſion of their chriſtian belief (all of which are inſerted under title Oaths.)

4. And as to *anabaptiſts* in particular, it is enacted by the ſaid act of toleration, that whereas ſome diſſenting proteſtants ſcruple the baptizing of infants,——Every perſon in pretended holy orders, or pretending to holy orders, or preacher, or teacher, that ſhall take the oaths, and make and ſubſcribe the declaration, and ſubſcribe the 39 articles, except as in the caſe of other diſſenting teachers as before, and except alſo part of the 27th article touching infant baptiſm, ſhall enjoy the ſame privileges as other diſſenting teachers.

II. Proteſtant diſſenters intitled to certain privileges by the act of toleration.

Beſides the exemption from penalties, his majeſty's proteſtant ſubjects are by the act of toleration intitled to certain privileges: which are of two kinds; 1. Such as concern all proteſtant diſſenters in general. 2. Such as concern their teachers in particular.

1. As to all *proteſtant diſſenters in general.*———They ſhall not be *proſecuted in any eccleſiaſtical court, for or by reaſon of their not conforming to the church of* England.———But this ſhall not exempt them from paying of tithes, or other parochial duties, or any other duties to the church or miniſter, nor from any proſecution in any eccleſiaſtical court, or elſewhere, for the ſame.

Since this act, Mr. *Hawkins* obſerves from 3 *Lev.* 376. a prohibition will lie to the ſpiritual court proceeding againſt perſons for incontinency, who have been married in a licenſed conventicle. The caſe was this; Two perſons, who were publiſhed and married in a conventicle, were afterwards libelled againſt in the ſpiritual court, for incontinence and fornication; and upon moving for a prohibition, time was aſſigned to ſhew cauſe why it ſhould not go, and the proceedings in the eccleſiaſtical court were ſtayed in the mean time. Afterwards, it was agreed that a prohibition ſhould

ſhould be granted, and that the plaintiff ſhould declare; that ſo, upon demurrer, the point might be tried. But what the judgment was, or whether the cauſe proceeded to trial, doth not appear by the report. *Cod.* 617.

Mr. *Hawkins* likewiſe obſerves (1 *Haw.* 12.) that it having baen doubted whether diſſenting ſchoolmaſters, as ſuch, were exempted by the toleration act from the penalties inflicted upon them in the ſeveral acts againſt diſſenters, it was farther enacted by the 12 *An. c.* 7. that whoever ſhall keep any ſchool or ſeminary, or teach any youth as tutor or ſchoolmaſter (unleſs he inſtruct them only in reading, writing, arithmetick, or ſuch mathematical learning as relates to navigation, or ſome mechanical art, and that in the *Engliſh* tongue) without having firſt ſubſcribed the declaration of the 13 & 14 *C.* 2. relating to conformity with the church of *England*, and without a licence from the biſhop, he ſhall be impriſoned for three months. But this was repealed by the 5 *G. c.* 4. So that the doubt is left where it was.

Mr. *Shaw* in his pariſh law, *p.* 68. ſays, it is held (but doth not ſay by whom) that diſſenters by the act of toleration are not exempted, either from the penalties of the 1 *J. c.* 4. or of the 13 & 14 *C.* 2. *c.* 4. againſt teaching a ſchool without licence from the biſhop.

In the caſe of *K.* and *Daviſon*, *T.* 12 *W.* as reported both by *Salkeld* and L. *Raymond*, *Daviſon*, a quaker, on an *habeas corpus* upon a writ of *excommunicato capiendo*, for teaching ſchool without licence, was admitted to bail, till it ſhould be determined whether this was an offence. But it it doth not appear from either of thoſe reports, what was the determination. 1 *Salk.* 105. L. *Raym.* 603.

Upon the whole, it ſeemeth ſomewhat ſtrange, that in a caſe of ſo much importance as is the education of children, this matter during the ſpace of ſo many years hath not yet been ſettled beyond all doubt.

Moreover; If any perſon diſſenting from the church of *England*, ſhall be appointed to the office of high conſtable, petit conſtable, churchwarden, overſeer of the poor, or any other parochial or ward office, and ſuch perſon ſhall ſcruple to take upon him any of the ſaid offices in regard of the oaths, or any other matter or thing, required by the law to be taken or done, in reſpect of ſuch office, every ſuch perſon ſhall and may execute ſuch office by a ſufficient deputy by him to be provided, that ſhall comply with the laws on this behalf. Provided, that the deputy be allowed and approved by ſuch perſons, and in ſuch manner, as ſuch officers ſhould by law have been allowed and approved.

2. *As to their teachers or preachers.*——Every teacher or preacher, in holy orders, or pretended holy orders, that is a miniſter, preacher, or teacher of a congregation, that ſhall take the oaths, and ſubſcribe the declaration and articles as aforeſaid, ſhall be thenceforth exempted from ſerving upon any jury, or from being choſen or appointed to bear the office of churchwarden, overſeer of the poor, or any other parochial or ward office,

or other office in any hundred, city, town, pariſh, diviſion, or wapentake.

But this ſeems clearly not to extend to *quaker* teachers or preachers; for they are neither in *holy orders*, nor *pretended holy orders*. It is true, by a ſubſequent ſtatute of the 7 & 8 *W.* quakers are exempted from ſerving on *juries*; but neither by that, nor any other act, are any quakers exempted from ſerving the office of churchwarden, overſeer of the poor, or other parochial or ward office, by themſelves, or a ſufficient deputy to be by them provided.

III. Laws againſt diſſenters not altered by the act of toleration.

1. No clauſe in the toleration act ſhall give any eaſe or benefit, to any popiſh recuſant; or to any that ſhall deny in preaching or writing the doctrine of the trinity. 1 *W. c.* 18. *ſ.* 17.

And every juſtice of the peace may at any time require any perſon that goes to any meeting for the exerciſe of religion, to make and ſubſcribe the ſaid declaration, and to take the ſaid oaths (or if quakers, the declaration of fidelity); and upon refuſal thereof, ſuch juſtice ſhall commit ſuch perſon to priſon; and ſhall certify his name to the next ſeſſions; and if he ſhall refuſe again to make and ſubſcribe the declaration there, he ſhall be taken for a popiſh recuſant convict, and ſuffer accordingly. *id. ſ.* 12.

2. The toleration act ſhall not extend to the ſtatute of the 25 *C.* 2. *c.* 2. which requires, that all perſons in office ſhall receive the ſacrament, according to the uſage of the church of *England.*

3. The toleration act ſhall not extend to the ſtatute of 30 *C.* 2. *ſt.* 2. *c.* 1. which diſables perſons from ſitting in either houſe of parliament, or coming to court, who ſhall not ſubſcribe the declaration therein mentioned, againſt popery.

IV. Laws relating to proteſtant diſſenters, made ſince the act of toleration.

1. If any perſon, diſſenting from the church of *England* (not in holy orders, or pretended holy orders, or pretending to holy orders, nor any preacher or teacher of any congregation) who ſhould have been intitled to the benefit of the toleration act, if he had duly taken, made, and ſubſcribed the oaths and declaration, or otherwiſe qualified himſelf as required by the act, ſhall be proſecuted on any of the penal ſtatutes, from which proteſtant diſſenters are exempted by the ſaid act,—ſhall at any time during ſuch proſecution, take, make, and ſubſcribe, the ſaid oaths and declaration, or being a quaker ſhall qualify according to that act, either in the manner preſcribed by that act, or before two juſtices who ſhall take and return the ſame to the next ſeſſions to be there recorded; ſuch perſon ſhall be intitled to the benefit of the act, as fully as if he had qualified himſelf in the time preſcribed by the act, and ſhall from thenceforth be diſcharged from all the penalties

nalties and forfeitures incurred by force of any of the aforeſaid penal ſtatutes. 10 *An. c.* 2. *ſ.* 8.

2. And any preacher or teacher, duly qualified, ſhall be allowed to officiate in any congregation, altho' the ſame be not in the county where he was ſo qualified; provided that the place of meeting hath been duly certified, and regiſtred, or recorded; and ſuch teacher or preacher ſhall, if required, produce a certificate of his having ſo qualified himſelf, under the hand of the clerk of the peace where he was qualified; and ſhall alſo before any juſtice of ſuch county where he ſhall ſo officiate, make and ſubſcribe ſuch declaration, and take ſuch oaths as are mentioned in the act of toleration, if thereunto required. 10 *An. c.* 2. *ſ.* 9.

3. If any mayor, bailiff, or other magiſtrate, ſhall wilfully reſort to, or be preſent at any publick meeting for religious worſhip, other than of the church of *England*, in the gown or other peculiar habit, or attended with the enſigns belonging to his office, he ſhall be diſabled to hold the ſame, or any other publick office. 5 *G. c.* 4. *ſ.* 2.

Diſtillers. See Exciſe.

Diſtreſs.

I. For what cauſes a diſtreſs ſhall be.
II. What goods may be diſtrained, and what not.
III. At what time the diſtreſs ſhall be taken.
IV. Where the diſtreſs ſhall be made.
V. That reaſonable diſtreſs ſhall be taken.
VI. Manner of making diſtreſs.
VII. Diſtreſs how to be demeaned.
VIII. Of reſcous and pound breach.
IX. Replewying the diſtreſs.
X. Sale of the diſtreſs.
XI. Irregularity in the proceedings.
XII. Landlord re-entring on non-payment.
XIII. Caſe of tenant holding over.
XIV. Tenant deſerting the premiſſes.
XV. Rent in caſe of an execution.
XVI. Rent on the death of tenant for life.
XVII. Of diſtreſs by warrant of juſtices of the peace.

I. For what cauſes a diſtreſs ſhall be.

Rent in arrear.

1. DISTRESS for rent muſt be, for rent in arrear; therefore it may not be made on the ſame day on which the rent becomes due; for if the rent is paid in any part of that day, whilſt a man can ſee to count money, the payment is good.

Tender of payment.

2. It muſt not be after tender of payment: for if the landlord come to diſtrain the goods of his tenant for rent behind; before the diſtreſs, the tenant may upon the land tender the arrearages, and if after that a diſtreſs be taken, it is wrongful: And if the landlord have diſtrained; if the tenant, before the impounding thereof, tender the arrearages, the landlord ought to deliver the diſtreſs, and if he doth not, the detainer is unlawful. Even ſo it is, in caſe of a diſtreſs for damage feaſant (or damage done by cattle treſpaſſing), the tender of amends before the diſtreſs, maketh the diſtreſs unlawful; and after the diſtreſs, and before the impounding, the detainer unlawful. 2 *Inſt.* 107.

But in this caſe, altho' the owner, tender ſufficient amends, yet he cannot take his beaſts out of the pound, if the amends be refuſed; but he muſt replevy: and if it be found at the trial that the amends was not ſufficient, the perſon on whom they treſpaſſed ſhall

ſhall have damages; if the amends tendred were ſufficient, then the owner of the beaſts ſhall have damages. *Dr. & St.* 112.

3. The like remedy may be had by diſtreſs, impounding and ſale, in caſes of rents, ſeck rents of aſſize, and chief rents, as in caſe of rents reſerved upon leaſe. 4 *G.* 2. *c.* 28. *ſ.* 5. Seck rents and chief rents.

4. Where the agreement is not by deed, the landlord may recover a reaſonable ſatisfaction, in an action on the caſe. 11 *G.* 2. *c.* 19. *ſ.* 14. Agreement not by deed.

5. Perſons having rent in arrear, upon any leaſe determined, may diſtrain for ſuch arrears after the determination of the leaſe, in the ſame manner as if it had not been determined; provided that ſuch diſtreſs be made in ſix months after the determination of ſuch leaſe, and during the continuance of ſuch landlord's title or intereſt, and during the poſſeſſion of the tenant from whom ſuch arrear became due. 8 *An.* *c.* 14. *ſ.* 6, 7. Leaſe determined.

6. It was adjudged, that one cannot avow for two diſtreſſes for one and the ſame rent; but if the defendant had pleaded, that at the time of taking the firſt diſtreſs, there was not ſufficient to be taken for the whole rent, upon the land, and that the firſt diſtreſs was but of ſuch a value, it had been good. 3 *Salk.* 137. Two diſtreſſes for one rent.

7. If any diſtreſs and ſale ſhall be made, for rent in arrear and due, when none is in truth due, the owner ſhall recover double value with full coſts. 2 *W. Seſſ.* 1. *c.* 5. *ſ.* 5. Diſtraining where no rent is due.

And if the diſtreſs be taken of goods without cauſe, the owner may make *reſcous*; but if they be diſtrained without cauſe, and impounded, the owner cannot break the pound and take them out, becauſe they are in the cuſtody of the law. 1 *Inſt.* 47.

II. What goods may be diſtrained, and what not.

1. Diſtreſs for rent muſt be of a thing, whereof a valuable property is in ſomebody; and therefore, dogs, bucks, does, conies, and the like, that are *feræ naturæ*, cannot be diſtrained. 1 *Inſt.* 47. Valuable property.

2. Altho' it be of valuable property, as a horſe; yet when a man or woman is riding on him, or an ax in a man's hand cutting of wood, and the like, they are for that time privileged, and cannot be diſtrained. 1 *Inſt.* 47. Separate from the perſon.

But it is ſaid, that if one be riding upon an horſe damage feaſant, the horſe may be led to the pound with the rider upon him. 1 *Sid.* 422, 440.

And it hath been held, that horſes joined to a cart, with a man upon it, cannot be diſtrained for rent (altho' they may for damage feaſant); but both cart and horſes may, if the man be not upon the cart. 1 *Ventr.* 36.

3. Valuable things ſhall not be diſtrained for rent, for benefit and maintenance of trades, which by conſequent are for the common wealth, and are there by authority of law; as a horſe in a ſmith's ſhop ſhall not be diſtrained for the rent iſſuing out of the ſhop, nor a horſe in an hoſtry, nor the materials in a weaver's ſhop for making of cloth, nor cloth or garments in a taylor's ſhop, nor ſacks of corn or meal in a mill, nor any thing diſtrained for For maintenance of trades.

damage

damage feaſant, for it is in cuſtody of the law; and the like. 1 *Inſt.* 47.

Tools of a man's profeſſion.

4. Beaſts belonging to the plough ſhall not be diſtrained (which is the ancient common law of *England*, for no man ſhall be diſtrained by the utenſils or inſtruments of his trade or profeſſion, as the ax of the carpenter, or the books of a ſcholar) while goods or other beaſts may be diſtrained. 1 *Inſt.* 47.

But this rule holds only in diſtreſſes for rent arrear, amerciaments, and the like; but doth not extend to caſes, where a diſtreſs is given, in the nature of an execution, by any particular ſtatute, as for poor rates, and the like. 3 *Salk.* 136.

Things fixed to the freehold.

5. Furnaces, cauldrons, or other things fixed to the freehold, or the doors or windows of a houſe, or the like, cannot be diſtrained. 1 *Inſt.* 47.

Money.

6. Money in a bag ſealed may be diſtrained, but not out of a bag. *Read. Diſtr.*

Corn cut.

7. By the 2 *W. Seſſ.* 1. *c.* 5. Perſons having rent arrear on any demiſe, leaſe, or contract, may ſeize and ſecure any ſheaves or cocks of corn, or corn looſe or in the ſtraw, or hay being in any barn or granary, or upon any hovel, ſtack, or rick, or otherwiſe upon any part of the land charged with the rent, and may lock up or detain the ſame in the place where found, in the nature of a diſtreſs; ſo as the ſame be not removed to the damage of the owner, out of the place where found and ſeized, but be kept there (as impounded) till replevied or ſold. *ſ.* 3.

Corn growing.

8. Alſo by the 11 *G.* 2. *c.* 19. The landlord may take and ſeize corn, graſs, hops, roots, fruits, pulſe, or other product growing, as a diſtreſs; and the ſame may cut, gather, make, cure, carry and lay up, when ripe, in the barns or other proper place on the premiſſes; and if there ſhall be no barn or proper place on the premiſſes, then in any other barn or proper place which he ſhall procure, ſo near as may be to the premiſſes: the appraiſement whereof ſhall be taken when cut, gathered, cured, and made, and not before. *ſ.* 8.

And notice of the place where the goods ſo diſtrained ſhall be lodged, ſhall in one week after the lodging thereof be given to the tenant, or left at the laſt place of his abode. *ſ.* 9.

Cattle eſcaped on the premiſſes.

9. Where a ſtranger's beaſts eſcape into the land, they may be diſtrained for rent, tho' they have not been levant and couchant (that is, tho' they have not been in the ground for a good ſpace of time, or ſo long as to have lain down and roſe up again to feed) provided they are treſpaſſers: But if the tenant of the land is in default, in not repairing his fences, whereby the beaſts came into the land, the leſſor cannot diſtrain ſuch beaſts, tho' they have been levant and couchant, unleſs he have given notice to the owner, and he ſuffer them to remain there afterwards. *Lutw.* 364.

For if the leſſor had the lands in his own hands, he muſt repair the fences, and conſequently he muſt ſee that his leſſee doth it, for he is not to take advantage of his own default. 3 *Salk.* 136.

10. In

10. In the caſe of *Fowkes* and *Joyce*, *T.* 1 *W.* It was held by the court, that if a driver of cattle put them out to paſture, by way of agiſtment, tho' but for a night, and by leave both of the leſſor and leſſee, yet they may be diſtrained for rent, tho' they be upon the road to market. 2 *Ventr.* 50. Cattle depaſtured.

But it is ſaid, that this ſhall only be, for ſo much of the rent, as the paſturage of thoſe cattle for that time ſhall amount unto.

III. At what time the diſtreſs ſhall be taken.

For a rent or ſervice the lord cannot diſtrain in the night, but in the day time; and ſo it is of a rent charge, but for damage feaſant, one may diſtrain in the night, otherwiſe it may be the beaſts will be gone before he can take them. 1 *Inſt.* 142. In the night.

For before ſun riſing, or after ſun ſet, no man may diſtrain but for damage feaſant. *Mirrour c.* 2. *ſ.* 26.

And as to damage feaſant, if a man come to diſtrain, and ſee the beaſts in his ſoil, and the owner chaſe them out of purpoſe before the diſtreſs taken; yet the owner of the ſoil cannot diſtrain them, and if he doth, the owner of the cattle may reſcue them, for the beaſts muſt be damage feaſant at the time of the diſtreſs. 1 *Inſt.* 161. Damage feaſant.

IV. Where the diſtreſs ſhall be made.

Where;

1. The king's officers, as ſheriffs and other, ſhall not take diſtreſſes in the fees wherewith churches in times paſt have been endowed; but diſtreſſes may be taken in poſſeſſions of the church newly purchaſed. 9 *Ed.* 2. *c.* 9. Church lands.

2. A man may diſtrain in places or lands within the fee, liable to diſtreſs, and not elſewhere. 52 *H.* 3. *c.* 15. 2 *Inſt.* 131. *Mir. Ch.* 2. *ſ.* 26. On the premiſſes.

3. And by the 11 *G.* 2. *c.* 19. The landlord may diſtrain any cattle or ſtock of the tenant, depaſturing on any common appendant or appurtenant, or any ways belonging to the premiſſes demiſed. *ſ.* 8. On the commons.

4. No perſon (except the king's officers) ſhall take diſtreſſes in the king's highway. 52 *H.* 3. *c.* 15. In the highway.

And the reaſon is, becauſe the king's ſubjects ought to have free paſſage, as well to fairs and markets, as about their other affairs. But yet this ſhall not be taken, to make the diſtreſs utterly unlawful, ſo as to take advantage thereof in bar to an avowry, but to this purpoſe, that if the lord diſtrain in the highway, the tenant may have an action againſt him upon this ſtatute. 2 *Inſt.* 131, 132.

5. But by the 11 *G.* 2. *c.* 19. If any tenant for life, years, at will, ſufferance, or otherwiſe, ſhall fraudulently or clandeſtinely convey off the premiſſes his goods or chattels, to prevent the landlord from diſtraining; ſuch landlord, or any perſon by him lawfully impowered, may in 30 days next after ſuch conveying away, ſeize the ſame wherever they ſhall be found, and diſpoſe Carried off the premiſſes.

of

of them in ſuch manner, as if they had been diſtrained on the premiſſes. *ſ.* 1.

But no landlord ſhall diſtrain any goods ſold *bona fide*, and for a valuable conſideration, before ſuch ſeizure made, to any perſon not privy to ſuch fraud. *ſ.* 2.

And if any tenant ſhall ſo fraudulently convey his goods, or if any perſon ſhall wilfully aid him therein, or in concealing the ſame; every perſon ſo offending ſhall forfeit to the landlord double the value of ſuch goods, to be recovered in any court of record at *Weſtminſter*. *ſ.* 3.

But if the goods conveyed or concealed ſhall not exceed the value of 50 *l.* the landlord or his agent may exhibit a complaint in writing, before two juſtices reſiding near, who may ſummon the parties, and determine the offence in a ſummary way; and on full proof of the offence, they ſhall by order under their hands and ſeals adjudge the offender to pay double the value of ſuch goods to the landlord or his agent, at ſuch time as they ſhall appoint: and if, having notice of ſuch order, he ſhall refuſe or neglect ſo to do, they ſhall by warrant levy the ſame by diſtreſs and ſale; and for want of ſuch diſtreſs, may commit the offender to the houſe of correction for ſix months, unleſs the money be ſooner paid. *ſ.* 4.

Perſons aggrieved by order of ſuch juſtices, may appeal to the next general or quarter ſeſſions; who may give coſts to either party. *ſ.* 5.

And where the party appealing ſhall enter into recognizance, with one or two ſureties, in double the ſum ſo ordered to be paid, with condition to appear at ſuch ſeſſions; the order of the juſtices ſhall not be executed againſt him in the mean time. *ſ.* 6.

V. That reaſonable diſtreſs ſhall be taken.

Diſtreſs to be reaſonable.

Diſtreſſes ſhall be reaſonable, and not too great; and he that taketh great and unreaſonable diſtreſſes, ſhall be grievouſly amerced. 52 *H.* 3. *c.* 4.

For example, if the lord diſtrain two or three oxen for 12 *d.* or the like ſmall ſum, and the owner bring a replevy of the oxen, and the lord avow the taking of them for the 12 *d*; of his own ſhewing, he ſhall make fine: or the party may have his action upon this ſtatute. 2 *Inſt.* 107.

If the lord diſtrain an ox, or horſe, for a penny; if there were no other diſtreſs upon the land holden, the diſtreſs is not exceſſive: but if there were a calf, or a ſwine, or the like, then the taking of the ox or horſe is exceſſive, becauſe he might have taken a beaſt of leſs value. 2 *Inſt.* 107.

VI. Manner of making diſtreſs.

Breaking gates.

1. Gates or inclosures may not be broken open, nor thrown down, to make diſtreſs. 1 *Inſt.* 161.

Opening doors.

2. Nor may the leſſor enter into the tenant's houſe, unleſs the doors are open. *Read. Diſtr.*

3. Where

3. Where any goods fraudulently or clandeſtinely conveyed, ſhall be kept in any houſe, barn, ſtable, outhouſe, yard, cloſe, or place locked up, faſtened, or otherwiſe ſecured, ſo as to prevent ſuch goods from being ſeized as a diſtreſs; it ſhall be lawful for the landlord, or his agent, to ſeize the ſame (firſt calling to his aſſiſtance the conſtable or other peace officer; and in caſe of a dwelling houſe, oath being alſo firſt made before a juſtice of the peace, of a reaſonable ground to ſuſpect that ſuch goods are therein) in the day time, to break open and enter ſuch houſe or place, and to take and ſeize the ſame, as he might have done if they had been in any open place. 11 *G.* 2. *c.* 19. *ſ.* 7. Aid of the conſtables and juſtices.

But except it be in this caſe where the goods are clandeſtinely conveyed, it may ſeem from what hath been ſaid, that the landlord hath no mean to come at the goods in order to make diſtreſs, if the tenant ſhall think fit to lock up his gates, and ſhut the doors: And the like may be obſerved in caſes of diſtreſs for the levying a penalty, by warrant of juſtices of the peace. Which matter may ſeem to require ſome conſideration.

4. If a landlord comes into a houſe, and ſeizes upon ſome goods as a diſtreſs, in the name of all the goods of the houſe; that will be a good ſeizure of all. 6 *Mod.* 215. Part in the name of the whole.

VII. Diſtreſs how to be demeaned.

1. He that diſtrains any thing that hath life, muſt impound it in a lawful pound, within three miles in the ſame county. 1 & 2 *P. & W. c.* 12. 1 *Inſt.* 47. Impounding off the premiſſes.

T. 21 *G.* 2. *Gimbart* and *Pelah.* The defendant juſtified impounding cattle damage feaſant. And on evidence it appeared, he put them into the next pound, though it happened to be in another county. And *Lee* Ch. J. held, it did not make him a treſpaſſer, though it ſubjected him to the penalty of the ſtatute of the 1 & 2 *P. & M. Str.* 1272.

Note, a pound is either *overt* or open, as in a pinfold made for ſuch purpoſes, or in his own cloſe, or in the cloſe of another by his conſent; and it is therefore called open, becauſe the owner may give his cattle meat and drink, without treſpaſs to any other, and then the cattle muſt be ſuſtained at the peril of the owner: Or it is a pound *covert* or cloſe, as to impound the cattle in ſome part of his houſe; and then the cattle muſt be ſuſtained with meat and drink at the peril of him that diſtraineth, and he ſhall not have any ſatisfaction therefore. 1 *Inſt.* 47.

But if the diſtreſs be of utenſils of houſhold, or ſuch like dead goods, which may take harm by wet or weather, or be ſtolen away; there he muſt impound them in a houſe, or other pound *covert*, within three miles in the ſame county; for if he impound them in a pound *overt*, he muſt anſwer for them. 1 *Inſt.* 47.

2. And by 11 *G.* 2. *c.* 19. any perſon diſtraining, may impound or otherwiſe ſecure the diſtreſs, of what kind ſoever it be, in ſuch place, or on ſuch part of the premiſes, as ſhall be moſt convenient; and may appraiſe, and ſell the ſame, as any perſon before might have done off the premiſſes. *ſ.* 10. Impounding on the Premiſſes.

Uſing the goods diſtrained.

3. Cattle diſtrained may not be worked or uſed, unleſs for the owner's benefit, as a cow milked; much leſs may they be abuſed or hurt. *Cro. Ja.* 148.

Diſtreſs dying.

4. If a diſtreſs dies in the pound, the diſtrainer may diſtrain again. 1 *Salk.* 248.

Dying by dureſs.

5. It is the diſtrainer's own fault, if he puts the diſtreſs in a pound which will not hold it; but he cannot juſtify the tying of cattle in the pound; and if he ties a beaſt, and it is ſtrangled, he muſt pay damages. 1 *Salk.* 248.

VIII. Of reſcous and pound-breach.

Reſcous and pound-breach.

1. By the common law, if a man break the pound, or the lock of it, or part of it, he greatly offendeth againſt the peace, and doth treſpaſs to the king, and to the lord of the fee, and to the ſheriffs, and hundredors, in breach of the peace, and to the party, and to the delaying of juſtice; and therefore hue and cry is to be levied againſt him, as againſt thoſe who break the peace. *Mir. c.* 2. *ſ.* 26.

2. And by ſtatute, on any pound-breach or reſcous, of goods diſtrained for rent, the perſon grieved thereby, ſhall in a ſpecial action upon the caſe, recover treble damages and coſts againſt the offender, or againſt the owner of the goods, if they be afterwards found to have come to his uſe. 2 *W. Seſſ.* 1. *c.* 5. *ſ.* 4.

Treble damages and coſts] In the caſe of Sir *Wilfred Lawſon* v. *Storey*, *M.* 6 *W.* It was adjudged, that the coſts ſhall be trebled as well as damages. L. *Raym.* 20.

3. When a man hath taken diſtreſs, and the cattle diſtrained, as he is driving them to the pound, go into the houſe of the owner; if he that took the diſtreſs demand them of the owner, and he deliver them not, this is a reſcous in law. 1 *Inſt.* 161.

IX. Replevying the diſtreſs.

Replevy.

1. The ſheriff of every county ſhall, at his firſt county day, or in two months after he hath received his patent of office, appoint four deputies at the leaſt, dwelling not above 12 miles one diſtant from another, to make replevies; on pain of 5 *l.* a month, half to the king, and half to him that ſhall ſue in any court of record. 1 & 2 *P. & M. c.* 12. *ſ.* 3.

2. And the ſheriff, or other officer having authority to grant replevins, ſhall in every replevin of a diſtreſs for rent, take in his own name, from the plaintiff and two ſureties, a bond in double the value of the goods diſtrained, to be aſcertained on the oath of one witneſs, and conditioned for proſecuting the ſuit with effect, and without delay, and for duly returning the goods diſtrained, in caſe a return ſhall be awarded; before any deliverance be made of the diſtreſs; and the ſheriff ſhall aſſign ſuch bond to the *avowant*, or perſon making *conuſance*. 11 *G.* 2. *c.* 19. *ſ.* 23.

Note,

Note, *avowry* is, where one takes a diſtreſs, and the perſon diſtrained ſues a replevin; then he that took the diſtreſs muſt *avow* and juſtify in his plea, for what cauſe he took it, if he took it in his own right; and this is called an *avowry:* If he took it in the right of another, then, when he hath ſhewed the cauſe, he muſt make *conuſance* of the taking, as bailiff or ſervant to him, in whoſe right he took it. *Terms of the L.*

X. Sale of the diſtreſs.

Where any goods ſhall be diſtrained for rent reſerved and due upon any demiſe, leaſe, or contract, and the tenant, or owner of the goods diſtrained, ſhall not within five days next after ſuch diſtreſs taken, and notice thereof (with the cauſe of ſuch taking) left at the chief manſion houſe, or other moſt notorious place on the premiſſes, replevy the ſame; in ſuch caſe the perſon diſtraining ſhall, with the ſheriff or under ſheriff of the county, or with the conſtable of the hundred, pariſh, or place, where ſuch diſtreſs ſhall be taken, cauſe the goods and chattels ſo deſtrained to be appraiſed by two ſworn appraiſers (whom ſuch ſheriff, under-ſheriff, or conſtable ſhall ſwear) to appraiſe the ſame truly, according to the beſt of their underſtandings; and after ſuch appraiſement, ſhall ſell the ſame for the beſt price can be gotten for them, for ſatisfaction of the rent, and charges of the diſtreſs, appraiſement, and ſale; leaving the overplus (if any) with the ſheriff, under ſheriff, or conſtable, for the owner's uſe. 2 *W. Seſſ.* 1. *c.* 5. *ſ.* 2. Sale.

M. 13 *G. Griffin* and *Scott.* Treſpaſs for entring his houſe, and keeping poſſeſſion of his goods eight days. The defendant juſtifies under a diſtreſs for Rent. But by the court; The defendant ought to have removed the goods at the five days end; and for the other three he is a treſpaſſer, and there is no juſtification. *Str.* 717.

By the 1 & 2 *P. & M. c.* 12. no perſon ſhall take for keeping in pound, or impounding any diſtreſs, above 4 *d.* for any one whole diſtreſs; and where leſs hath been uſed, there to take leſs; on pain of 5 *l.* to the party grieved, beſides what he ſhall take above 4 *d.* *ſ.* 2.

XI. Irregularity in the proceedings.

Where any diſtreſs ſhall be made, for any kind of rent juſtly due, and any irregularity ſhall be afterwards done by the party diſtraining, or his agent; the diſtreſs ſhall not be deemed unlawful, nor the diſtrainer a treſpaſſer *ab initio*, but the party aggrieved may recover ſatisfaction for the ſpecial damage, in an action of treſpaſs or on the caſe; and if he recover, he ſhall have full coſts. 11 *G.* 2. *c.* 19. *ſ.* 19. Irregularity.

But no tenant ſhall recover on ſuch action, if tender of amends hath been made before the action brought. *ſ.* 20.

XII. Landlord re-entring on non-payment.

Re-entring.

Where half a year's rent ſhall be in arrear, and the landlord hath right by law to re-enter for non-payment; he may, without any formal demand of re-entry, ſerve a declaration in ejectment, and on recovering judgment and execution, ſhall hold the premiſſes diſcharged from the leaſe. 4 *G.* 2. *c.* 28. *ſ.* 2.

XIII. Caſe of tenant holding over.

Holding over after the term expired.

1. If any tenant for life or years, or other perſon who ſhall come into poſſeſſion by, from, or under him, ſhall wilfully hold over any lands, after the determination of ſuch term, and after demand made, and notice in writing given for delivering the poſſeſſion thereof; he ſhall, from the time that he ſhall ſo hold over, pay double the yearly value thereof, to be recovered by action of debt, in any court of record. 4 *G.* 2. *c.* 28. *ſ.* 1.

But this remedy ſeemeth not altogether adequate to the evil; for three reaſons. 1. Becauſe ſuch action is certainly tedious and expenſive. 2. It is uncertain, when the action is over, whether the tenant will be able to pay. 3. What is chiefly wanted, namely, putting the landlord into poſſeſſion, is not obtained by ſuch action, but for that he ſhall be ſtill to ſeek. A more ſhort and eaſy method of ouſting the tenant of his poſſeſſion, ſeemeth more eligible in the like caſes.

Holding over after having given notice to quit.

2. If any tenant ſhall give notice of his intention to quit the premiſſes, at a time mentioned in ſuch notice, and ſhall not accordingly deliver up the poſſeſſion thereof at the time; he ſhall from thenceforth pay double rent, to be recovered in like manner as the ſingle rent. 11 *G.* 2. *c.* 19. *ſ.* 18.

This clauſe alſo proceedeth upon a Suppoſition, which perhaps may not be true, namely, that the tenant is a man of ſubſtance. It is more likely, that if he were able to live elſewhere, he would not chuſe to hold over under ſuch circumſtances, nor perhaps would the landlord want to be rid of him. The putting him out of poſſeſſion, by ſome expeditious and eaſy method, ſeemeth the more adequate remedy in this caſe alſo, in like manner as is provided in the caſe where the tenant deſerteth the premiſſes, as here followeth.

XIV. Tenant deſerting the premiſſes.

Tenant deſerting.

If any tenant at rack rent, or where the rent reſerved ſhall be full three fourths of the yearly value of the demiſed premiſſes, who ſhall be in arrear for one year's rent, ſhall deſert the premiſſes, and leave the ſame uncultivated or unoccupied, ſo as no ſufficient diſtreſs can be had; two juſtices at the requeſt of the landlord may go and view the ſame, and affix on the moſt notorious part of the premiſſes, notice (A) in writing, what day (at the diſtance of 14 days at the leaſt) they will return to take a ſecond view; and if on ſuch ſecond view, the tenant ſhall not appear

pear and pay the rent, or there ſhall not be ſufficient diſtreſs on the premiſſes, then the juſtices may put the landlord into poſſeſſion, and the leaſe as to ſuch demiſe ſhall from thence be void. 11 *G.* 2. *c.* 19. *ſ.* 16.

But the tenant may appeal to the next juſtice or juſtices of aſſize; who may award coſts to either party. *ſ.* 17.

And the juſtices in this, and all other the like caſes, ought to make a record (B) of the whole proceedings, to be produced afterwards in caſe of an action brought againſt the landlord by ſuch tenant. For the juſtices are not to carry witneſſes with them about the country, to teſtify what they ſhall act as judges of record; nor doth it ſeem requiſite, that they ſhould go and teſtify in a court upon their oaths, what they ſhall have acted in ſuch caſes; but to make a record in writing under their hands and ſeals, of all that hath been done: which record being produced in court, ſeemeth to be the proper evidence in all ſuch caſes, for that the law repoſeth an intire confidence therein, and it ſhall not be gainſaid; otherwiſe there would be no end of things.

XV. Rent in caſe of an execution.

No goods being on any meſſuage, lands, or tenements, leaſed for life, term of years, at will, or otherwiſe, ſhall be liable to be taken by execution, unleſs the party, at whoſe ſuit the execution is ſued out, ſhall before the removal of ſuch goods from off the premiſſes, pay to the landlord or his bailiff all ſuch rent as ſhall be then due for the premiſſes, provided that it amount not to more than one year's rent; and if the ſaid arrears ſhall exceed one year's rent, then the party paying ſuch landlord one year's rent, may proceed to execute his judgment. 8 *An.* *c.* 14. *ſ.* 1. Execution.

XVI. Rent on the death of tenant for life.

Where any tenant for life ſhall die, before or on the day on which the rent was made payable, on any demiſe or leaſe which determined on the death of ſuch tenant for life; the executors or adminiſtrators of ſuch tenant for life, may in an action on the caſe recover, if ſuch tenant for life die on the day on which the ſame was made payable, the whole, or if before ſuch day, then a proportion of ſuch rent, according to the time ſuch tenant for life lived. 11 *G.* 2. *c.* 19. *ſ.* 15. Tenant for life dying.

XVII. Of diſtreſs by warrant of juſtices of the peace.

By the 27 *G.* 2. *c.* 20. It is enacted as follows: *In all caſes where any juſtice of the peace is or ſhall be required or impowered by any act of parliament, to iſſue a warrant of diſtreſs, for the levying of any penalty inflicted, or any ſum of money directed to be paid by ſuch act; it ſhall be lawful for the juſtice granting ſuch warrant, therein to order and direct the goods and chattels ſo to be diſtrained to be ſold and diſpoſed of, within a certain time to be limited in ſuch warrant, ſo as ſuch time be not leſs than four days, nor*

more than eight days, unleſs the penalty or ſum of money for which ſuch diſtreſs ſhall be made, together with the reaſonable charges of taking and keeping ſuch diſtreſs, be ſooner paid.

And the officer making ſuch diſtreſs, ſhall and may deduct the reaſonable charges of taking, keeping, and ſelling ſuch diſtreſs, out of the money ariſing by ſuch ſale; and the overplus (if any) after ſuch charges, and alſo the ſaid penalty or ſum of money, ſhall be ſatisfied and paid, ſhall be returned on demand, to the owner of the goods ſo diſtrained: and the officer executing ſuch warrant, if required, ſhall ſhew the ſame to the perſon whoſe goods are diſtrained, and ſhall ſuffer a copy thereof to be taken.

But this ſhall not extend, to alter any proviſions relating to diſtreſſes to be made for the payment of tithes and church rates by the people called quakers, contained in the acts of the 7 & 8 W. c. 34. *and the* 1 G. ſt. 2. c. 6.

Officer may deduct the reaſonable charges] But here is no power given to the juſtices, to aſcertain ſuch charges; therefore it ſeemeth, that the officer executing the warrant ſhall be the ſole judge thereof in the firſt inſtance, and afterwards, if the owner of the goods diſtrained ſhall be diſſatisfied, the reaſonableneſs thereof ſhall be determined by a judge and jury upon an action brought.

But by ſpecial ſtatutes, this power of aſcertaining the charges of diſtreſs and ſale, is ſometimes given to the juſtices, as is ſet forth in this book under the reſpective titles.

Tithes and church rates by the people called quakers] The aboveſaid ſtatutes of the 7 & 8 *W. c.* 34. and 1 *G. ſt. 2. c.* 6. relate not only to *tithes* and *church rates* (by which laſt ſeemeth only to be underſtood the churchwardens rate for the repair and other uſes of the church), but alſo to any cuſtomary or other rates, dues, or payments, belonging to any church or chapel, which of right by law and cuſtom ought to be paid for the ſtipend or maintenance of any miniſter or curate officiating in any church or chapel. Therefore for any thing that appears from the words of this ſtatute, unleſs it be in the caſe of *tithes* or *church rates*, the juſtices may order the diſtreſs for thoſe other dues and payments to be detained for a certain time, and the officer may deduct the charges not only of *diſtraining*, but alſo of *keeping* and *ſelling* the diſtreſs; whereas by thoſe former acts abovementioned, the officer was only allowed to deduct the neceſſary charges of *diſtraining*.

A. Notice to be affixed on the premiſſes being deſerted.

Abraham Sutcliffe,

TAKE *notice, that upon the complaint of* Eleanor Aſhton *of* Underley *in the county of* Weſtmorland, *widow, made unto us* John Moore, *eſquire, and* Richard Burn, *clerk, two of his majeſty's juſtices of the peace for the ſaid county, that you the ſaid* Abraham Sutcliffe *have deſerted the meſſuage and tenement called* ——— *conſiſting of* ——— *ſituate, lying, and being at* Underley *aforeſaid, in the county aforeſaid, unto you demiſed at rack rent by her the ſaid* Eleanor

Eleanor Aſhton, *and that there is in arrear and due from you the ſaid* A. S. *unto her the ſaid* E. A. *one whole year's rent for the ſaid demiſed premiſſes, and that you have left the ſaid premiſſes uncultivated and unoccupied, ſo that no ſufficient diſtreſs can be had, to countervail the ſaid arrears of rent; we the ſaid juſtices (having no intereſt, nor either of us having any intereſt, in the ſaid demiſed premiſſes) on the ſaid complaint as aforeſaid, and at the requeſt of her the ſaid* E. A. *have this day come upon and viewed the ſaid demiſed premiſſes, and do find the ſaid complaint to be true; and on the 28th day of this preſent month of* February *we will return to take a ſecond view thereof, and if upon ſuch ſecond view, you, or ſome perſon on your behalf, ſhall not appear and pay the ſaid rent in arrear, or there ſhall not be ſufficient diſtreſs on the ſaid premiſſes, then we the ſaid juſtices will put her the ſaid* E. A. *into the poſſeſſion of the ſaid demiſed premiſſes, according to the form of the ſtatute in ſuch caſe made and provided. In witneſs whereof we have hereunto ſet our hands and ſeals, and have cauſed this notice to be affixed on the out door of the manſion houſe, the ſame being the moſt notorious part of the ſaid premiſſes, this fourth day of* February *in the 27th year of the reign of our ſovereign lord* George *the ſecond of* Great Britain, France, *and* Ireland, *king.*

B. Record of putting the landlord into poſſeſſion.

Weſtmorland. BE *it remembred, that on the fourth day of* February *in the 27th year of the reign of our ſovereign lord* George *the ſecond of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, at* Underley *in the ſaid county,* Eleanor Aſhton *of* Underley *aforeſaid, in the county aforeſaid, widow, complained unto us* John Moore, *eſquire, and* Richard Burn, *clerk, two of the juſtices of our ſaid lord the king, aſſigned to keep the peace within the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, That ſhe the ſaid* Eleanor Aſhton *did demiſe at rack rent unto* Abraham Sutcliffe *of* ——— *yeoman, the meſſuage and tenement call.d* ——— *conſiſting of* ——— *ſituate, lying, and being at* Underley *aforeſaid, in the county aforeſaid; and that on the ſaid fourth day of* February *in the year aforeſaid, there was in arrear and due unto her the ſaid* E. A. *from him the ſaid* A. S. *tenant of the ſaid demiſed premiſſes, one whole year's rent thereof; and that he the ſaid* A. S. *had deſerted the ſaid demiſed premiſſes, and left the ſame uncultivated and unoccupi d, ſo as no ſufficient diſtreſs could be had to countervail the ſaid arrears of rent: whereupon the ſaid* E. A. *then and there, to wit, on the ſaid fourth day of* February *in the year aforeſaid, at* Underley *aforeſaid, in the county aforeſaid, requeſted of us ſo as aforeſaid being juſtices, to her in this behalf that a due remedy ſhould be provided, according to the form of the ſtatute in that caſe made. Which complaint and requeſt by us the aforeſaid juſtices being heard, we the ſaid* John Moore, *eſquire, and* Richard Burn, *clerk, juſtices aforeſaid (having no intereſt, nor either of us having any intereſt, in the ſaid demiſed premiſſes) on the ſaid fourth day*

of February *in the year aforesaid, at* Underley *aforesaid, in the county aforesaid, did personally go upon and view the said demised premisses, and then and there upon our own proper view did find the said complaint to be true, and did then and there affix on the most notorious part of the said demised premisses, to wit, upon the out door of the mansion house aforesaid, a notice in writing under our hands and seals, that we the said justices, on the 28th day of the same month of* February *in the year aforesaid, would return to take a second view thereof. Upon which said 28th day of* February *in the 27th year aforesaid of our said sovereign lord, we the said justices do now return, come upon, and take a second view of the premisses aforesaid, and there upon our own proper view do find, that he the said* Abraham Sutcliffe *doth not appear, nor any person on his behalf doth appear, and pay the said rent in arrear, and that there is no sufficient distress upon the premisses aforesaid, nor upon any part thereof, to countervail the said arrears of rent. Therefore we the said justices, at* Underley *aforesaid, in the county aforesaid, on the 28th day of* February *aforesaid in the year aforesaid, do put the said* Eleanor Ashton *into the possession of the said demised premisses, according to the form of the statute aforesaid. In witness whereof, we the said justices, unto this record do set our seals, at* Underley *aforesaid, in the county aforesaid, on the said 28th day of* February *in the 27th year aforesaid of the reign of our said sovereign lord* George *the second of* Great Britain, France, *and* Ireland, *king.*

Distringas. See Process.
Divine Service. See Publick Worship.
Dogs. See Game.
Door breaking open. See Arrest.
Dower. See Forfeiture.
Drover. See Cattle.
Drunkenness. See Alehouses.
Duelling. See Homicide.
Dyers. See Woollen Manufacture.

Eggs. See Game.
Egyptians. See Vagrants.
Embracery. See Maintenance.

Escape.

THIS is to be understood of escapes in *criminal* cases; and not in *civil* cases, as for debt, or the like.

An escape is, where one that is arrested gaineth his liberty, before he is delivered by course of law. *Terms de la ley.* Escape, what.

Escapes are of three kinds. 1. By a person who hath the offender in his custody; this is properly called an *escape*. 2. Caused by a stranger; this is commonly called a *rescue*. 3. By the party himself; either without force, which is simply an escape, or with force, which is *prison breaking*. *Rescous* and *prison breaking* are treated of under their respective titles; and this title treats only of escapes properly so called. Concerning which we will treat in the following order: Several kinds thereof.

I. Of escape by the party himself.
II. Escape suffered by a private person.
III. Escape suffered by an officer.
IV. What is a voluntary, and what a negligent escape.
V. Concerning the retaking of a person escaped.
VI. Indictment for an escape.
VII. Trial and conviction for an escape.
VIII. Punishment of an escape.
IX. Aiding in attempting to escape.

I. Of escape by the party himself.

As all persons are bound to submit themselves to the judgment of the law, and to be ready to be justified by it; whoever in any case refuses to undergo that imprisonment which the law thinks fit to put upon him, and frees himself from it by any artifice, before such time as he is delivered by due course of law, is guilty of a high contempt, punishable with fine and imprisonment. 2 *Haw.* 122. Escape by the party himself.

But escape committed by the party himself, belongs more properly to the title *Prison breaking*.

II. *Escape suffered by a private person.*

Escape by a private person.

It seems to be a good general rule, that wherever any person hath another lawfully in his custndy, whether upon an arrest made by himself or another, he is guilty of an escape, if he suffer him to go at large, before he hath discharged himself of him, by delivering him over to some other who by law ought to have the custody of him. 2 *Haw.* 138.

And the law is generally the same, in relation to escapes suffered by private persons, as by officers. 2 *Haw.* 138.

III. *Escape suffered by an officer.*

Escape by an officer.

There must be a previous arrest.

1. In order to make it an escape, there must be an actual arrest; and therefore, if an officer having a warrant to arrest a man, see him shut up in a house, and challenge him as his prisoner, but never actually have him in his custody, and the party get free, the officer cannot be charged with an escape. 2 *Haw.* 129.

And justifiable.

2. And as there must be an actual arrest, such arrest must be also justifiable; for if it be either for a supposed crime, where no such crime was committed, and the party neither indicted nor appealed, or for such a slight suspicion of an actual crime, and by such an irregular mittimus as will neither justify the arrest nor imprisonment, the officer is not guilty of an escape, by suffering the prisoner to go at large. 2 *Haw.* 129.

And for a criminal offence.

3. And as the imprisonment must be justifiable, so it must be also for a criminal offence. 2 *Haw.* 129.

And not detained only for fees.

4. Also if a prisoner be acquitted, and detained only for his fees, it will not be criminal to suffer him to escape, tho' the judgment were, that *he be discharged paying his fees*, so that till they be paid, the first imprisonment continued lawful as before; for inasmuch as he is detained, not as a criminal, but only as a debtor, his escape cannot be more criminal than that of any other debtor: Yet if a person convicted of a crime, be condemned to imprisonment for a certain time, and also *till he pay his fees*, and he escape after such time is elapsed, without paying them, perhaps such escape may be criminal, for that it was part of the punishment that the imprisonment be continued till the fees should be paid; but it seems, that this is to be intended where the fees are due to others as well as to the gaoler, for otherwise the gaoler will be the only sufferer by the escape, and it will be hard to punish him for suffering an injury to himself only, in the nonpayment of a debt in his power to release. 2 *Haw.* 129, 130.

Too much liberty, an escape.

5. Also, it is an escape in some cases, to suffer a prisoner to have greater liberty, than by the law he ought to have; as to admit a person to bail, who by law ought not to be bailed, but to be kept in close custody. 2 *Haw.* 130.

So if a gaoler, or other officer, shall license his prisoner to go abroad for a time, and to come again; this is an escape, because the prisoner is found out of the bounds of his prison, tho' the prisoner return again, according as he shall be prescribed. *Dalt. c.* 159.

6. If

6. If the gaoler so closely pursue the prisoner who flies from him, that he retakes him, without losing sight of him, the law looks on the prisoner so far in his power all the time, as not to adjudge such a flight to amount at all to an escape; but if the gaoler once lose sight of the prisoner, and afterwards retake him, he seems in strictness to be guilty of an escape. And if he kill him in the pursuit, he is in like manner guilty of an escape, tho' he never lost sight of him, and could not otherwise take him, not only because the king loses the benefit he might have had by the forfeiture on his attainder, but also because the publick justice is not so well satisfied by the killing him in such an extrajudicial manner. 2 *Haw.* 130. Losing sight, an escape.

IV. What is a voluntary, and what a negligent escape.

1. Wherever an officer, who hath the custody of a prisoner, charged with and guilty of a capital offence, doth knowingly give him his liberty, with an intent to save him from his trial or execution, this is a voluntary escape. 2 *Haw.* 130. Voluntary escape, what.

2. A negligent escape is, when the party arrested or imprisoned doth escape against the will of him that arrested or imprisoned him, and is not freshly pursued and taken again, before he hath lost the sight of him. *Dalt. c.* 159. Negligent escape, what.

3. If the constable or other officer, shall voluntarily suffer a thief, being in his custody to go into the water to drown himself, this escape is felony in the constable, and the drowning is felony in the thief: Otherwise if the thief shall suddenly without the assent of the constable, kill, hang, or drown himself, this is but a negligent escape in the constable. *Dalt. c.* 159. Suffering a prisoner to kill himself.

V. Concerning the retaking of a person escaped.

1. If an officer hath arrested a man by virtue of a warrant, and then taketh his promise that he will come again, and so letteth him go; the officer cannot after arrest or take him again by force of his former warrant, for that this was by the consent of the officer: But if he return, and put himself again under the custody of the officer, it seems that it may be probably argued, that the officer may lawfully detain him, and bring him before the justice in pursuance of the warrant. *Dalt. c.* 169. 1 *Haw.* 81. Let go voluntarily, cannot be retaken.

2. But if the party arrested had escaped of his own wrong, without the consent of the officer, now upon fresh suit, the officer may take him again and again, so often as he escapeth, altho' he were out of view, or that he shall fly into another town or county, and bring him before the justice upon whose warrant he was first arrested. *Dalt. c.* 169. Fresh suit.

And it is said generally in some books, that an officer who hath negligently suffered a prisoner to escape, may retake him wherever he finds him, without mentioning any fresh pursuit; and indeed since the liberty gained by the prisoner is wholly owing to his own wrong, there seems to be no reason he should take any manner of advantage from it. 2 *Haw.* 131, 132.

3. And

Breaking open doors to retake.

3. And wherever a person is lawfully arrested for any cause, and afterwards escapes, and shelters him in an house, the doors may be broke open to take him, on refusal of admittance. 2 *Haw.* 87.

Retaking excuseth not the escape.

4. It is perhaps the better opinion, that wherever a prisoner, by the negligence of his keeper, gets so far out of his power, that the keeper loses sight of him, the keeper is punishable for the escape, notwithstanding he retook him immediately after: And it is clear, that he cannot excuse himself from an escape, by killing a prisoner in the pursuit, tho' he could not possibly retake him; but must in such case be content to submit to such punishment, as his negligence shall appear to deserve. 2 *Haw.* 132.

VI. Indictment for an escape.

Indictment.

It seems clear, that every indictment (A) for an escape, whether negligent or voluntary, must expressly shew, that the prisoner was actually in the defendant's custody for such a crime; and that he went at large; And if for a voluntary escape, that the defendant feloniously and voluntarily suffered him to go at large; and must set forth, not the felony in general, but the particular kind of felony: But it seems questionable, whether such certainty, as to the nature of the crime, be necessary in an indictment for a negligent escape; for that it is not material in this case, whether the person who escaped were guilty or not. 2 *Haw.* 133, 229.

VII. Trial and conviction for an escape.

Gaoler not producing him, a conviction.

1. If the prisoner be of record in a court, and the gaoler being called, cannot give an account where he is, this is a conviction of an escape; but seems not a conviction of a voluntary escape, unless the gaoler confesseth it: And the gaoler may be fined in such a case; but not convicted of felony, without indictment or presentment. 1 *H. H.* 599, 603.

Felony to be tried before the escape.

2. And it seems to be clear, that a keeper who voluntarily suffers another to escape, who was in his custody for felony, cannot be arraigned for such escape as for felony, until the principal be attainted, for that the felony of the prisoner shall not be tried between the king and the keeper, because the prisoner is a stranger thereunto; yet he may be indicted and tried for it as a misprision, before the attainder of the principal offender. 2 *Haw.* 135. 2 *Inst.* 591, 592.

VIII. Punishment of an escape.

Punishment of escape before arrest.

1. If a felon escapes before arrest, it is not punishable in him as felony; but for the flight he forfeits his goods when presented. *Hale's Pl.* 111.

Of escape by a private person.

2. If a private person arrest a felon, and he escape by force from him, the township shall be amerced, but it seems it excuseth the party, because he cannot raise power to assist him: but if a constable,

constable, or other officer, hath the custody of a prisoner, bringing him to the gaol, it seems that a simple escape by the rescue of the prisoner himself, doth not wholly excuse him, because he may take sufficient strength to his assistance. 1 *H. H.* 601.

Of a negligent escape.

3. Wherever a person is found guilty upon an indictment or presentment of a negligent escape of a criminal actually in his custody, he is punishable by fine and imprisonment, according to the quality of the offence. 2 *Haw.* 136, 139. 1 *H. H.* 600, 604.

And it seems to be the better opinion, that a sheriff is as much liable to answer for a negligent escape suffered by his bailiff, as if he had actually suffered it himself, and that the court may charge either the sheriff or bailiff for such an escape; and if a deputy gaoler be not sufficient to answer a negligent escape, his principal must answer for him. 2 *Haw.* 135.

Note; Mr. *Hawkins*, altho' he is one of the most accurate of all writers, yet hath inserted in this place certain penalties for escapes, which were expired above 200 years before. 2 *Haw.* 137.

If a prisoner for felony break the gaol, this seems to be a negligent escape in the gaoler, because there wanted either that due strength in the gaol, that should have secured him, or that due vigilance in the gaoler or his officers to have prevented it; and therefore it is lawful for the gaoler to hamper them with irons to prevent their escape; for if gaolers might not be punished for this as a negligent escape, they would be careless either to secure their prisoners, or to retake them that escape. 1 *H. H.* 601.

Of a voluntary escape.

4. It seems to be generally agreed, that a voluntary escape suffered by an officer, amounts to the same kind of crime, and is punishable in the same degree, as the offence of which the party was guilty, and for which he was in custody, whether it be treason, felony, or trespass. 2 *Haw.* 134.

But yet a voluntary escape is no felony, if the act done were not felony at the time of the escape made, as in case of a mortal wound given, and the party not dying till after the escape; but the officer may be fined to the value of his goods. *Dalt. c.* 159.

Also, a voluntary escape suffered by one who wrongfully takes upon him the keeping of a gaol, seems to be punishable in the same manner, as if he was never so rightfully intitled to such custody; for that the crime is in both cases of the same ill consequence to the publick: and there seems to be no reason that a wrongful officer should have greater favour than a rightful, and that for no other reason but because he is a wrongful one. 2 *Haw.* 134.

But it seemeth to be clear, that no one is punishable as for felony, for the voluntary escape of a felon, but the person only who is actually guilty of it; and therefore that the principal gaoler is only fineable for a voluntary escape suffered by his deputy; for that no one shall suffer capitally for the crime of another. 2 *Haw.* 135.

And therefore, altho' in all civil causes, the sheriff is to be responsible, or the gaoler, at election, yet if the gaoler do voluntarily suffer a felon in his custody to escape; this, inasmuch as it reacheth to life, is felony only in the gaoler, that was immediately trusted with the custody, and not in the sheriff. 1 *H. H.* 597.

For the escape must be voluntarily permitted in him that permitted it, which could not be in the high sheriff, tho' it were such in the gaoler, for he was not privy to it, and therefore could not do it feloniously; but it was a negligent escape in him, in trusting such a person with the custody of his prisoners, that would be false to his trust, and therefore the sheriff shall pay, but not corporally suffer for the miscarriage of his gaoler. 1 *H. H.* 597, 598.

But altho' the felony for which a man is committed, be not within clergy; yet the person who voluntarily suffers him to escape, shall have the benefit of clergy. 1 *H. H.* 599.

IX. Aiding in attempting to escape.

Aiding in attempting to escape.

By the 16 *G.* 2. *c.* 31. If any person shall assist any prisoner to *attempt* his escape from any gaol, tho' no escape be actually made, if such prisoner was then attainted or convicted of treason or felony (except petty larceny), or lawfully committed to, or detained in any gaol, for treason or felony (except petty larceny) expressed in the warrant of commitment; he shall be guilty of felony, and be transported for seven years: And if such prisoner was then convicted of, or detained in gaol for petty larceny, or any other crime not being treason or felony, expressed in the warrant of commitment, or was then in gaol for debt amounting to 100*l.* he shall be guilty of a misdemeanor, and be liable to fine and imprisonment.

And if any person shall convey, or cause to be conveyed, any *disguise, instrument, or arms*, to any prisoner in gaol, or to any other person there for his use, without consent of the keeper; such person, altho' *no escape or attempt* be actually made, shall be deemed to have delivered such disguise, instrument, or arms, with an intent to assist such prisoner to escape or attempt to escape; and if such prisoner then was attainted or convicted of treason or felony (except petty larceny), or lawfully detained in gaol, for treason or felony (except petty larceny) expressed in the warrant of commitment;—he shall be guilty of felony, and be transported for seven years: But if the prisoner was then convicted or detained for petty larceny, or any other crime not being treason or felony, expressed in the warrant of commitment, or for debt amounting to 100*l.* he shall be guilty of a misdemeanor, and liable to fine and imprisonment.

And if any person shall assist any prisoner to attempt to escape *from any constable*, or other person, who shall have the lawful charge of him, in order to carry him to gaol, by virtue of a warrant of commitment for treason or felony (except petty larceny); or if any person shall assist any felon to attempt his escape

from

from on board any *boat or vessel carrying felons for transportation*, or from the *contractor* for the transportation of such felons, or his agents, he shall be guilty of felony, and be transported for seven years.

All prosecutions on this act to be commenced within a year after the offence committed.

A. Indictment against a constable for an escape.

Westmorland. THE *jurors for our lord the king upon their oath present, That on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at* ——— *in the county aforesaid, one* A. I. *of* ——— *came before* J. P. *esquire, then and yet one of the justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; and the said* A. I. *did, then and there, on his oath, before the same justice, charge, accuse, and give information against one* A. O. *of* ——— *aforesaid in the county aforesaid, yeoman, for a certain misdemeanor, in taking fish out of the pond of* ——— *at* ——— *in the said county* [or, as the offence shall be:] *Whereupon he the said* J. P. *the justice aforesaid, did then and there, to wit, at* ——— *aforesaid, in the county aforesaid, make a certain warrant, under his hand and seal, in due form of law, directed to the constable of* ——— *aforesaid, in the county aforesaid, thereby requiring him the said constable to take the body of the said* A. O. *and bring him before the said* J. P. *the justice aforesaid, to answer to such matters and things as should be alledged against him, touching the said misdemeanor; Which said warrant, afterwards, to wit, on the same day and year abovementioned, at* ——— *aforesaid, in the county aforesaid, was delivered to one* A. C. *then being constable of* ——— *aforesaid, in due form of law, to be executed; by virtue of which said warrant the said* A. C. *afterwards, to wit, on the said* ——— *day of* ——— *in the year aforesaid, at* ——— *aforesaid, in the said county, did take and arrest the body of the said* A. O. *and him the said* A. O. *in his custody for the cause aforesaid, had: Nevertheless, the said* A. C. *of* ——— *aforesaid, in the county aforesaid, yeoman, afterward, to wit, on the said* ——— *day of* ——— *in the year aforesaid, the duty of his office in that part not regarding, at* ——— *aforesaid, in the county aforesaid, unlawfully and negligently did permit the said* A. O. *to escape, and go at large, out of the custody of him the said* A. C. *to the great hindrance of justice, in contempt of our said lord the king, and his laws, and against the peace of our said lord the king, his crown and dignity.*

Escheat. See Forfeiture.

Estreat.

Estreat, what.

1. ESTREAT *(Extractum)* is used for the true copy or note of some original writing or record, and especially of fines and amerciaments, imposed in the rolls of a court, to be levied by the bailiff or other officer.

Making out the estreats.

2. The justices and judges before whom fines or amerciaments shall be, shall charge the clerks of the estreats, by their oath to be made, that they make the rolls of such estreats distinctly by express words, of the cause of the loss, of the term of the year, and the nature of the writ, and betwixt what parties such issues or amerciaments shall be lost, as well in the king's suit, as in the suit of the party. 7 *H.* 4. *c.* 3.

Delivering the same to the sheriff.

3. All clerks of the peace, and town clerks, shall deliver to the sheriff within 20 days after *Sep.* 29. yearly, a perfect estreat or schedule of all fines, issues, amerciaments, and other forfeitures whatsoever, forfeited in any sessions before *Michaelmas*; on pain of 50*l.* half to the king, and half to him that shall sue. 22 & 23 *C.* 2. *c.* 22. *s.* 7, 8.

And into the court of exchequer.

4. And shall also yearly, on or before the second *Monday* after the morrow of *All Souls*, deliver into the court of exchequer, a duplicate, certificate, and estreat of such estreats and schedules, so delivered to the sheriff; on the like pain of 50*l.* *id. s.* 8. And likewise they may be further amerced by the barons of the exchequer. 3 *G.* *c.* 15. *s.* 12.

And upon delivery thereof, they shall take the following oath, to be administred by one of the barons:

"You shall swear, that these estreats now by you delivered, "are truly and carefully made up and examined, and that all "fines, issues, amerciaments, recognizances, and forfeitures which "were set, lost, imposed, or forfeited, and in right and due "course of law ought to be estreated in the court of exchequer, "are, to the best of your knowledge and understanding, therein "contained; and that in the same estreats are also contained and "expressed all such fines as have been paid into the court, from "which the said estreats are made, without any wilful or fraudu-"lent discharge, omission, *misnomer*, or defect whatsoever: So "help you god." 4 & 5 *W.* *c.* 24. *s.* 5.

Penalty of making default.

5. And if he shall withhold, or miscertify the same, he shall forfeit treble; half to the king, and half to him that shall sue; and shall also lose his office, and be incapable to hold any office in the revenue. 22 & 23 *C.* 2. *c.* 22. *s.* 9.

Process for levying.

6. Where any fine or forfeiture shall be paid to the sheriff, clerk of the peace or other officer, and so certified into the exchequer; process shall be awarded to the sheriff against such person for levying the same. 22 & 23 *C.* 2. *c.* 22. *s.* 10.

Sheriff's duty in levying.

7. And in levying, the sheriff shall shew the estreats under the seal of the exchequer, to the party indebted; on pain of treble damages to the party, and fine to the king, on conviction before the justices of the peace, or other justices. 42 *Ed.* 3. *c.* 9.

8. And

8. And the sheriff shall make no estreats to levy his own amerciaments (that is to say, in the torn), till two justices (1 Q.) to be named at *Michaelmas* sessions by the *custos rotulorum*, or in his absence by the eldest in the commission, have inspected his books; and the said estreats shall be indented betwixt the said justices and sheriff, and sealed with their seals, the one part to remain with the justices, and the other with the sheriff: And the persons who shall gather the said amerciaments, shall be sworn by the said justices, that they shall take no more than is forfeited, and contained in the said estreats. 11 *H.* 7. *c.* 15. Estreats in the torn.

Form of the estreat.

Westmorland. AN *extract of all the issues, fines, amerciaments, and recognizances, set, lost, imposed, and forfeited to our sovereign lord the king, at the general quarter sessions of the peace of our said lord the king, holden at* ——— *in and for the said county of* ——— *on* ——— *the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *before* ——— *esquires, justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed,* John Robinson, *gentleman, clerk of the peace for the county aforesaid, then and there attending:*

	l.	s.	d.
Of A. O. *late of* ——— *in the said county, labourer, for a trespass and assault at* ——— *aforesaid in the said county, whereof he is indicted and convicted; and his fine set at five shillings, which he paid to the sheriff in court* ——— ——— ——— ——— ———	0	5	0
Of A. O. *of* ——— *in the said county, yeoman, because he came not now here to answer to such things as against him, on the part of our said lord the king, should be objected, as by a certain recognizance taken before* J. P. *esquire, one of the justices of our said lord the king, assigned to keep the peace in the said county, he undertook*	10	0	0
Of A. S. *of* ——— *in the said county, yeoman, one of the pledges of the said* A. O. *because he had him not to answer as above* ——— ——— ——— ——— ———	5	0	0
Of B. S. *of* ——— *in the said county, yeoman, the other of the pledges of the said* A. O. *for the like* ———	5	0	0

Evidence.

I. Of evidence in general.
II. Of written evidence.
III. Of the evidence of witnesses.
IV. Of process to cause witnesses to appear.
V. Of the manner of giving evidence.

I. Of evidence in general.

Evidence, what.

1. EVIDENCE in legal understanding, doth not only contain matters of record, as letters patents, fines, recoveries, inrollments, and the like, and writings under seal, as charters and deeds, and other writings without seal, as court rolls, accounts, and the like; but in a larger sense it containeth also the testimony of witnesses, and other proofs to be produced and given, for the finding of any issue joined between the parties. And it is called *evidence*, because thereby the point in issue is to be made evident to the jury. 1 *Inst.* 283.

The best evidence is required.

2. It is a general rule in all cases, civil and criminal, that the best evidence that may be had, or that the nature of the thing will bear, is to be given: and it is upon this reason, that a copy of a record is admitted, because one cannot have the record it self; but a copy of a copy will not do. *Law of Evid.* 286.

Presumptive evidence.

3. Many times juries, together with other matter, are much induced by presumptions; whereof there are three sorts, violent, probable, and light or temerary. Violent presumption many times amounts to full proof; as if one be run thro' the body with a sword in a house, whereof he instantly dieth, and a man is seen to come out of that house, with a bloody sword, and no other man was at that time in the house. Probable presumption moveth little. But light, or temerary presumption moveth not at all. 1 *Inst.* 6.

If all the witnesses to a deed be dead (as no man can keep his witnesses alive, and time weareth out all men) then violent presumption, which stands for a proof, is continual and quiet possession; altho' the deed may receive credit from a comparing of seals, writing, and the like. 1 *Inst.* 6.

What number of witnesses are required.

4. The common law did not require any certain number of witnesses, for the trial of any crime whatsoever. 2 *Haw.* 428.

And before a justice of the peace in divers cases, one witness is sufficient to convict an offender; the same being directed by special statutes.

But in case of high treason, whereby corruption of blood shall be made, no person shall be attainted, but upon the oaths of two witnesses, either both to the same overt act, or one of them to one, and the other of them to another overt act of the same treason. 7 *W.* c. 3. *s.* 2.

And

And by 29 *C.* 2. *c.* 3. *s.* 5. Devises of lands shall be attested by three witnesses at the least.

II. Of written evidence.

1. A *private* act of parliament, that concerned *Rochester* bridge, tho' printed by *Rastal*, was not allowed in evidence, not being examined by the record. Otherwise of *general* statutes; there the printed book is good evidence. *Tr. per pais* 348. Act of parliament.

And there are very many of the old statutes, which are admitted and obtain as such, tho' there be no record at this day extant thereof, nor yet any other written evidence of the same, but what is in a manner only traditional, as namely, ancient copies, transcripts, books, pleadings, and the common received opinion and reputation, and the approbation of the judges learned in the laws. For the judges and courts of justice are *ex officio* bound to take notice of publick acts of parliament, and whether they are truly pleaded or not, and therefore they are the triers of them. But it is otherwise of private acts of parliament, for they may be put in issue, and tried by the record upon *nul tiel* record pleaded. *Hale's Hist. Com. L.* 15, 16.

2. Records prove themselves, and cannot be proved by witnesses. But copies of them must be proved by witnesses, and then they are good evidence. No razure or interlining shall be intended in them. But the surest way is, to exemplify a record under the great seal, or at least under the seal of the court. 10 *Co* 92. Record.

And nothing shall be admitted as evidence of what was done at another trial, till the record of that trial be produced. *Read. Evid.*

3. A record of the sessions was allowed in evidence, to prove that a person had not taken the oaths 1 *Salk.* 284. Record of sessions.

4. But a private book of entries shall not be allowed for that purpose: Thus in the case of *The Queen* and *Mead*, the defendant, and eight others, were incorporated under an act made 39 *El.* by the name of the surveyors of the highways at *Aylesbury* in the county of *Bucks*, and were trustees of a charity called *Bedford*'s gift. An information was preferred against the defendant, for executing this office, being an office of trust, without having taken the oaths, contrary to the 25 *C.* 2. *c.* 2. To which he pleaded not guilty. And now it was moved for a rule, that the prosecutor might have two books produced, which these surveyors kept, in which they entred their elections, and also their receipts and disbursements; and that he might take copies of what he thought necessary, and that the books might be produced at the next assizes at the trial. But it was denied by the court; because they are perfectly of a private nature, and it would be to make a man produce evidence against himself in a criminal prosecution. L. *Raym.* 927. Private book of entries.

5. By the 7 *J.* *c.* 12. No tradesman or handicraftsman shall be allowed to give his shop book in evidence, on an action for money due for wares delivered, or for work done, above one Shop book.

year before the action brought. But this not to extend to any trading between merchant and merchant, merchant and tradesman, or between tradesman and tradesman, for any thing directly falling within the compass of their mutual trades and merchandize.

In the case of *Pitman* and *Maddox*, 11 *W.* A shop book was allowed for evidence, it being proved that the servant that writ the book was dead, and this was his hand, and he accustomed to make the entries, and no proof was required of the delivery of the goods; and *Holt* C. J. said, it was as good evidence as the proof of a witness's hand to an obligation: and he held, that tho' the statute of the 7 *J.* says, a shop book shall not be evidence after the year, yet it is not of it self evidence within the year. 2 *Salk.* 690.

Book of accounts.

6. A man's book of accounts is no evidence for the owner of the book, but for the adverse party; for his book cannot be of better credit than his oath, which would not serve in his own case. *Tr. per pais* 348.

Deed.

7. Every ancient deed proves it self, where possession has gone accordingly. But later deeds must be proved by witnesses. If the witnesses are dead, their handwriting must be proved. A deed cannot be proved by a copy; yet in cases of extremity, as where the deed was burnt, or lost by some such accident, the judges may at their discretion allow it to be proved by witnesses. *Wood* 1025.

And it was holden for law, by *Vernon* judge of assize, that where the defendant himself hath the deed which concerns the land in question, and will not produce it; in such a case, the copy thereof will be permitted to be given in evidence; and so it was, and the witness swore it once in his hand, and that the copy produced was a true copy of the deed, and himself did examine it. *Clayt.* 15.

And the counterpart of an ancient deed which is lost, may be good evidence with other circumstances: but not of it self, without other circumstances. 6 *Mod.* 225.

Indenture with the seals torn off.

8 An indenture to guide the uses of a common recovery, was offered in evidence, but the seals were torn off; yet it being proved to have been done by a little boy, it was allowed to be read. *Palm.* 402.

Will.

9. The probate of a will, under which a title to land is made, is not evidence; but the will it self must be produced. 1 *Keb.* 117.

Letters patents.

10. If upon collateral issue it is to be proved, that such a one was justice of the peace, baronet, or the like; common reputation is sufficient proof, without shewing the commission, or letters patent of the creation. *Tr. per pais* 347.

Indorsement of interest on a bond.

11. *M.* 11 *G.* *Serle* and Lord *Barrington*. The indorsement on a bond by the obligee, of payment of interest, was allowed to be given in evidence by his administrator, to take off the presumption from the length of time. L. *Raym.* 1371.

Information before a justice of peace.

12. It seems settled, that the examination of an informer taken upon oath, and subscribed by him, either before a coroner upon

upon an inquiſition of death, or before juſtices of the peace, in purſuance of the ſtatutes of *Ph. & M.* upon a bailment or commitment for any felony, may be given in evidence at the trial, if it be made out by oath to the ſatisfaction of the court, that ſuch informer is dead, or unable to travel, or kept away by the means or procurement of the priſoner, and that the examination offered in evidence is the very ſame that was ſworn before the coroner or juſtice, without any alteration whatſoever. 2 *Haw.* 429.

But it hath been adjudged, that it is not ſufficient to authorize the reading of ſuch examination, to make oath that the proſecutors have uſed all their endeavours to find the witneſs, but cannot find him. 2 *Haw.* 430.

But it is ſaid to have been adjudged, by the court of king's bench, in the 7 *W.* (1 *Salk.* 281.) upon advice with the juſtices of the common pleas, on an indictment for a *libel*, that depoſitions taken before a juſtice of the peace, relating to the fact, could not be given in evidence, tho' the deponent were dead; and that the reaſon why ſuch depoſitions may be given in evidence in *felony*, depends upon the ſtatutes of *P. & M.* and that this cannot be extended farther than the particular caſe of felony. But in the report of this caſe, 5 *Mod.* 165. it is ſaid, that the reaſon why ſuch depoſitions could not be read, was becauſe the defendant was not preſent when they were taken, and therefore had not the benefit of a croſs examination. 2 *Haw.* 430.

Depoſitions in perpetuam rei memoriam.

13. Depoſitions *in perpetuam rei memoriam*, are not evidence, ſo long as the witneſſes live. 1 *Salk.* 286.

Inſcription on a grave ſtone.

14. A copy of an inſcription on a grave ſtone, has been allowed to be given in evidence. 2 *Roll's Abr.* 686, 7.

Almanack.

15. The examination of an almanack, that ſuch a day of the month was *Sunday*, was ruled to be ſufficient; and that a trial of this by a jury is not neceſſary, altho' it is a matter of fact. *Cro. El.* 227.

Father's entry of the child's birth.

16. And an almanack wherein the father had writ the day of the nativity of his ſon, was allowed as evidence to prove the nonage of the ſon. *Raym.* 84.

Nomenclator of Weſtminſter ſchool.

17. The nomenclator of *Weſtminſter* ſchool was produced to prove, that the *Latin* word *capital* (uſed to ſignify a *coif*) is a noun ſubſtantive; and the court allowed that authority before *Rider*'s dictionary. *E.* 16 *C.* 2. *Tr. per pais* 25.

Camden's Britannia.

18. *Camden's Britannia* was offered in evidence, to prove a particular cuſtom, but refuſed; for the court held, that a general hiſtory might be given in evidence to prove a matter relating to the kingdom in general, becauſe the nature of the thing requires it; but not to prove a particular right or cuſtom: So in the caſe of St. *Katharine*'s hoſpital, *Hale* Ch. J. allowed a chronicle to be evidence of a particular point of hiſtory in *Edward* the third's time: So a year book may be evidence, to prove the courſe of the court. And in this caſe it was admitted, that heralds books are good evidence as to pedigrees, and pariſh regiſters as to births and marriages, upon the nature of the thing. But in the exchequer, the queſtion being whether the *Abbey de Sentibus* was an inferior abbey or not, *Dugdale's Monaſticon* was refuſed for

evidence, becauſe the original records might be had in the augmentation office. 1 *Salk.* 281. 7 *W. Stainer* and *The burgeſſes of Droitwich.*

Similitude of hands.

19. It ſeems to have been generally holden, ſince the reverſal of the attainder of *Algernon Sidney*, that ſimilitude of hands is not evidence in any criminal caſe, whether capital or not capital. 2 *Haw.* 431. L. *Raym.* 39.

Letter.

20. Tho' one conſent to have a letter read, yet the jury, on pain of attaint, are not bound to find it. 1 *Keb.* 249.

III. Of the evidence of witneſſes.

Confeſſion.

1. It ſeems that the confeſſion of the defendant, whether taken on an examination before juſtices of the peace, in purſuance of the 1 *&* 2 *P. & M. c.* 13. or 2 *&* 3 *P. & M. c.* 10. upon a bailment or commitment for felony, or taken by the common law upon an examination for other crimes not within thoſe ſtatutes, or in diſcourſe with private perſons, hath always been allowed to be given in evidence, againſt the party confeſſing, but not againſt others. 2 *Haw.* 429.

But wherever a man's confeſſion is made uſe of againſt him, it muſt be all taken together, and not by parcels. 2 *Haw.* 429.

Witneſs of kin to the party.

2. It is to be obſerved, that there be many circumſtances that diſable a juror, that are not ſufficient exceptions againſt a witneſs: Thus the exception of kindred, is a good cauſe of challenge againſt a juror, but not againſt a witneſs; therefore the father may be a competent witneſs for or againſt his ſon, or the ſon for or againſt his father. Theſe and the like exceptions may be to the credit or credibility of the witneſs, but are not exceptions againſt his competency. 2 *H. H.* 276.

For, that I may obſerve it once for all, the exceptions to a witneſs are of two kinds, 1. Exceptions to the credit of the witneſs, which do not at all diſable him from being ſworn, but yet may blemiſh the credibility of his teſtimony; and in ſuch caſe the witneſs is to be allowed, but the credit of his teſtimony is left to the jury. 2. Exceptions to competency of the witneſs, which do exclude him from giving his teſtimony, and of theſe exceptions the court is the judge. 2 *H. H.* 276, 277.

Witneſs infamous.

3. It ſeems agreed, that an attainder, judgment, or conviction of treaſon, felony, piracy, præmunire, perjury, or forgery on 5 *El.* and alſo a judgment in attaint for giving a falſe verdict, or in conſpiracy at the ſuit of the king; and alſo judgment for any crime whatſoever to ſtand in the pillory, or to be whipped or branded, are good cauſes of exception againſt a witneſs, while they continue in force. 2 *Haw.* 432.

But it is agreed, that no ſuch conviction or judgment can be made uſe of to this purpoſe, unleſs the record be actually produced in court. 2 *Haw.* 433.

Alſo, it is a general rule, that a witneſs ſhall not be aſked any queſtion, the anſwering to which might oblige him to accuſe himſelf of a crime; and that his credit is to be impeached only by general accounts of his character and reputation, and not by proofs

of

of particular crimes, whereof he never was convicted. 2 *Haw.* 433.

And a man shall not be permitted to swear, that he was suborned and perjured. *St. Tr. V.* 3. 427.

And Lord *Coke* says, a witness alledging his own infamy or turpitude, is not to be heard. 4 *Inst.* 279.

It seems clear at this day, that outlawry in a personal action is not a good exception against a witness, as it is against a juror. 2 *Haw.* 433.

A person convicted of felony, who is admitted to his clergy, and burnt in the hand, is thereby re-enabled to be a witness. 2 *Haw.* 433.

And it seems agreed, that the king's pardon of treason or felony, after a conviction or attainder restores the party to his credit. 2 *Haw.* 433.

Witness an infidel.

4. It seems agreed to be a good exception, that a witness is an infidel; that is, as it seemeth, that he believes neither the old nor new testament to be the word of god, on one of which our laws require the oath should be administred. 2 *Haw.* 434.

Witness wanting discretion.

5. Want of discretion is a good exception against a witness; on which account alone it seems, that an infant may be excepted against. 2 *Haw.* 434.

But if an infant be of the age of 14 years, he is as to this purpose of the age of discretion, to be sworn as a witness; but if under that age, yet if it appear, that he hath a competent discretion, he may be sworn. 2 *H. H.* 278.

And in many cases an infant of tender years may be examined without oath, where the exigence of the case requires it; which possibly, being fortified with concurrent evidences, may be of some weight; especially in cases of rape, buggery, and such crimes as are practised upon children. 2 *H. H.* 279, 284. *Str.* 700.

Witness interested.

6. It seems an uncontested rule in all cases, that it is a good exception against a witness, that he is either to be a gainer or loser by the event of the cause, whether such advantage be direct and immediate, or consequential only. 2 *Haw.* 433.

Thus in an information upon the statute of usury, the party to the usurious contract shall not be admitted to be a witness against the usurer, for in effect he should be witness in his own cause, and should avoid his own bonds and assurances, and discharge himself of the money borrowed. 1 *Inst.* 6.

Thus also an attorney ought not to be examined against his client, because he is obliged to keep his secrets: but of his own knowledge before retainer, he may be examined as a witness, if served with a subpœna. *Wood* 1028.

But upon an indictment for battery, or the like, the party grieved may be a witness against the defendant, because the prosecution is at the suit of the king. *Wood* 1096.

Also it seems agreed, that it is no good exception against a witness, that he has a maintenance from the king; for every one may maintain his own witnesses. 2 *Haw.* 434.

Thus also, one commoner may be a witness for another claiming common, because in effect it charges himself; that is to say,

he admits another to have common with himself. But if the prescription be, that all the inhabitants of such a place ought to have common there, one of the inhabitants cannot be a witness, to prove that another of the said inhabitants ought to have common there, because in effect he would swear to give himself right of common there. L. *Raym.* 731.

In evidence to a jury at bar, a special issue by rule of court was directed to try the custom of lady *Percie*'s manor of *Westwood* in *Cumberland*, whether fines on the tenants on their lord's death, be due to the heirs or successors of the lord, during his minority; the defendant excepted to the steward, because he had a fee on admission, but it was not allowed, and he was sworn. 3 *Keb.* 90.

A witness's laying a wager in the cause, is no hindrance to his being a witness; for the other has an interest in his evidence, which he cannot deprive him of. *Forest.* 31. *Str.* 652.

If a person *apprehends* himself to be interested, though in strictness of law he is not, yet he ought not to be sworn: as where the witness for the plaintiff apprehended that if the plaintiff should recover, he would remit a claim of some money which he (the plaintiff) had upon this witness; but if he should not recover, he would not remit it; although in strictness of law, his recovering or not recovering in that case would not alter the claim: or as in case where the witness owned himself to be under an honorary, though not under a binding engagement, to pay the costs. *Str.* 129.

Husband and wife.

7. It seems agreed, that the husband and wife being as one and the same person in affection and interest, can no more give evidence for one another, in any case whatsoever, than for themselves; and that regularly the one shall not be admitted to give evidence *against* the other, nor the examination of the one be made use of against the other, by reason of the implacable dissension which might be caused by it, and the great danger of perjury from taking the oaths of persons under so great a biass, and the extreme hardship of the case. Yet some exceptions have been allowed in cases of evident necessity; as in the lord *Audley*'s case, who held his wife, while his servant by his command ravished her; or where a man is indicted for a forcible marriage on the statute of the 3 *H.* 7, or where either a husband or wife have cause to demand sureties of the peace against the other. 2 *Haw.* 431, 432.

Judge or juror being a witness.

8. It seems agreed, that it is no exception against a person's giving evidence either for or against a prisoner, that he is one of the judges or jurors who are to try him. 2 *Haw.* 432.

Witness being an accomplice.

9. It has been long settled, that it is no exception against a witness, that he hath confessed himself guilty of the same crime, if he hath not been indicted for it; for if no accomplices were to be admitted as witnesses, it would be generally impossible to find evidence to convict the greatest offenders. 2 *Haw.* 432.

Also it hath been often ruled, that accomplices who are indicted, are good witnesses for the king, until they be convicted. 2 *Haw.* 432.

Also

Alſo it hath been often adjudged, that ſuch of the defendants in an information, againſt whom no evidence is given, may be witneſſes for the others. 2 *Haw.* 432.

It hath been alſo adjudged, that where three perſons are ſued in three ſeveral actions on the ſtatute for a ſuppoſed perjury in their evidence concerning the ſame thing, they may be good witneſſes in ſuch actions for one another. 2 *Haw.* 432.

10. It ſeems agreed, that it is no good exception againſt a witneſs, that he is an alien, or villein, or bondman. 2 *Haw.* 434. Witneſs an alien or bondman.

11. If a man be over ſea, or dead, the party ſhall be admitted to prove his hand by witneſſes, or comparing it with other writing. *Tr. per p.* 301. Witneſs over ſea, or dead.

The ſayings of a dead man are not to be given in evidence to prove a particular fact; they are only to be admitted in proof of general uſages and cuſtoms; but as for a particular fact, lying in the knowledge of a particular perſon, by his death the evidence is loſt. *St. Tr. V.* 5. 456.

And it hath been agreed, that the evidence given by a witneſs at one trial, cannot in the ordinary courſe of juſtice be made uſe of againſt a defendant, on the death of ſuch witneſs at another trial. 2 *Haw.* 430.

12. It ſeems agreed, that what a *ſtranger* has been heard to ſay, is in ſtrictneſs no manner of evidence, either for or againſt a priſoner, not only becauſe it is not upon oath, but alſo becauſe the other ſide hath no opportunity of a croſs examination; and therefore it ſeems a ſettled rule, that it ſhall never be made uſe of, but only by way of inducement or illuſtration of what is properly evidence: yet it ſeems, that what the *priſoner* has been heard to ſay at another time, may be given in evidence, either to invalidate or confirm the teſtimony which he gives in court, 2 *Haw.* 431. Hearſay.

IV. Of proceſs to cauſe witneſſes to appear.

1. The compulſory means to bring in witneſſes, are of two kinds. 1. By proceſs of *ſubpœna* (A) iſſued in the king's name, by the juſtices, or others, where the trial is to be. 2. Which is the more ordinary and more effectual means (in criminal caſes), the juſtices that take the examination of the perſon accuſed, and the information of the witneſſes, may at that time, or at any time after, and before the trial, bind over (B) the witneſſes to appear at the ſeſſions, and in caſe of their refuſal either to come, or to be bound over, may commit them for their contempt in ſuch refuſal. 2 *H. H.* 282. Two ways of cauſing witneſſes to appear.

2. But that which is a great defect in this part of judicial adminiſtration, is, that there is no power to allow witneſſes their charges in criminal caſes; whereby many times poor perſons grow weary of attendance, or bear their own charges therein, to their great hindrance and loſs. 2 *H. H.* 282. Charges of witneſſes.

That is to ſay, unleſs it be in the caſe of grand or petit larceny, or other felony; for in ſuch caſes, by the ſtatute of the

25 *G.* 2. *c.* 36. reaſonable charges ſhall be allowed by the court to the proſecutor upon conviction, to be paid by the treaſurer out of the county rates.

And by the ſtatute of the 27 *G.* 2. *c.* 3. When any poor perſon ſhall appear on recognizance in any court to give evidence againſt another accuſed of grand or petit larceny or other felony, the court may, at the prayer, and on the oath of ſuch perſon, and on conſideration of his circumſtances, order the treaſurer to pay him ſuch ſum as they ſhall think reaſonable for his time, trouble, and expence; which order the proper officer ſhall make out for the fee of 6 *d.* except in *Middleſex*, where the ſame ſhall be paid by the overſeers of the poor where the perſon was apprehended.

Where a witneſs is a priſoner in execution.

3. Where a witneſs is a priſoner in execution for debt, he muſt be brought up by *habeas corpus ad teſtificandum*, to give his evidence. *St. Tr. V.* 2. 580. *V.* 4. 37.

Witneſs how far privileged againſt an arreſt.

4. One was ſubpœnaed *ad teſtificandum*, and prayed a privilege from being arreſted, which was granted; and by the court, it will ſuperſede an arreſt upon mean proceſs, but not upon an execution; yet the ſheriff in that caſe may be committed for his contempt. *Nevil*'s caſe, 15 *C.* 2. *Tr. per p.* 310.

Penalty of a witneſs not appearing.

5. By the 5 *El. c.* 9. *ſ.* 12. If any perſon, upon whom any proceſs out of any of the courts of record within this realm ſhall be ſerved, to teſtify or depoſe concerning any matter depending therein, and having tendred unto him, according to his countenance or calling, ſuch reaſonable ſum for his coſts and charges, as (having regard to the diſtance of the places) is neceſſary to be allowed in that behalf, do not appear according to the tenor of the proceſs, having not a lawful and reaſonable impediment; he ſhall forfeit 10 *l.* and ſhall yield ſuch further recompence to the party grieved, as to the judge of the court, out of which the proceſs was awarded, ſhall ſeem meet, according to the loſs that the party which procured the proceſs ſhall ſuſtain; to be recovered by the party grieved, in any court of record.

In the caſe of *Wyat* and *Winkford*, 2 *G.* 2. A motion was made for an attachment againſt a perſon, for not attending at the aſſizes to give his evidence, being ſubpœnaed, and having received one guinea for his charges, and being promiſed to have one guinea a day while there, and his charges paid. And a rule was made to ſhew cauſe. And afterwards cauſe was ſhewed, that an attachment ought not to go, but the party injured had his action upon the ſtatute of *Eliz.* but the court thought, that it was a good foundation for an attachment, the diſobedience to the ſubpœna being a contempt to the court; and tho' an action might be brought on the ſtatute, yet that was a more dilatory method, and more difficult to proceed in, which encouraged witneſſes not attending frequently upon trials, at which they were ſubpœnaed to appear and give evidence. And therefore the rule was made abſolute. L. *Raym.* 1529.

E. 14 *G.* 2. *Chapman* and *Pointon.* A witneſs was ſerved with a ſubpœna at *Cheſter*, to attend the ſittings at *Guildhall*, and two guineas were tendred by the perſon who ſerved it, and being objected to as too little, he declared he would give no more. The witneſs

witnefs not coming up, an attachment was moved for; but on fhewing caufe was difcharged: the court faying it was too little, and that the witnefs is not obliged to truft to the court's allowing him more when he comes to the book; for perhaps the party may not call him, and then it may be difficult for him to get home again: that this way of punifhing as for a contempt was new, and practifed only in this court; the common pleas not doing it to this day, but leaving the party to his remedy on the 5 *El. c.* 9. and therefore they would not enter into any nice calculations of the expence, but confined their inquiry to the queftion, whether the non-attendance was through obftinacy or not. *Str.* 1150.

And, by the court, in the cafe of *Hammond* and *Stewart*, *H.* 8 *G.* the witneffes ought to have a reafonable time, to put their affairs in order, that their attendance upon the court may be as little prejudice to themfelves as poffible. *Str.* 510.

In criminal cafes, if a witnefs hath been bound over, and do not appear; he fhall forfeit his recognizance.

V. Of the manner of giving evidence.

Which party fhall begin the evidence.

1. He who affirms the matter in iffue, whether plaintiff or defendant, ought to begin to give evidence. *Litt.* 36. *Goldf.* 23.

Evidence to be upon oath.

2. The evidence both for and againft a prifoner, ought to be upon oath.

And if a peer is produced as a witnefs, he ought to be fworn. 3 *Keb.* 61.

Lord *Prefton* was committed by the court of quarter feffions, for refufing to be fworn to give evidence to the grand jury, on an indictment of high treafon; and on his being brought by *habeas corpus* into the king's bench, *Holt* Ch. J. faid, it was a great contempt, and that had he been there, he would have fined him, and committed him till he paid the fine; but being otherwife, he was bailed. 1 *Salk.* 278.

But a quaker's affirmation in all cafes not being criminal, fhall be allowed as evidence, without an oath; but in criminal cafes, his affirmation fhall not be allowed. 7 & 8 *W. c.* 34.

Witneffes may be examined apart.

3. The court may indulge a prifoner in examining the witneffes apart, but he cannot demand it of right. *St. Tr. V.* 4, 9.

Evidence to be given in the prifoner's prefence.

4. In cafes of life, no evidence is to be given againft a prifoner, but in his prefence. 2 *Haw.* 428.

Witneffes cannot teftify a negative.

5. Witneffes cannot teftify a negative, but only an affirmative. *Wood* 1026.

A man fhall not difprove his own witneffes.

6. A prifoner may not call witneffes to difprove what his own witneffes have fworn. *St. Tr. V.* 2. 764, 792.

Whether a witnefs may read his evidence.

7. A witnefs fhall not be permitted to read his evidence, but he may look upon his notes to refrefh his memory. *St. Tr. V.* 4, 45.

When he may be crofs examined.

8. A witnefs fhall not be crofs examined, till he has gone thro' the evidence for the party on whofe fide he was produced. *St. Tr. V.* 2. 792.

Variance.

9. It hath been admitted, that in order to ſhew a variance in the evidence, a depoſition taken by a witneſs before a juſtice of the peace, may at the priſoner's deſire be read at the trial, in order to take off the credit of the witneſs, by ſhewing a variance between ſuch depoſitions, and the evidence given in court. And for the ſame reaſon it ſeems agreed, that where a witneſs at one trial varies from his own evidence at another, in relation to the ſame matter, ſuch variance may alſo be given in evidence to invalidate his teſtimony at the ſecond trial. 2 *Haw.* 430.

Which party ſhall conclude.

10. The counſel of that party which doth begin to maintain the iſſue, ought to conclude. *Tri. p. pais* 220.

A. Subpœna to give evidence.

GEORGE *the ſecond, by the grace of god, of* Great Britain, France *and* Ireland, *king, defender of the faith, and ſo forth. To* A. B. C. D. *and* E. F. *greeting: We command you, and every of you, that all buſineſs being laid aſide, and all excuſes whatſoever ceaſing, yo do in your proper perſons appear before our juſtices aſſigned to keep the peace in our county of* ——— *and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, at the general quarter ſeſſions of the peace, to be holden at* ——— *in and for the ſaid county, on* ——— *the* ——— *day of* ——— *at the hour of ten in the forenoon of the ſame day, to teſtify the truth, and give evidence on behalf of the inhabitants of the pariſh of* ——— *in the ſaid county, againſt* A. O. *in a caſe of baſtardy. And this you are in no wiſe to omit, nor any of you to omit, on pain of one hundred pounds. Witneſs Sir* James Lowther, *baronet, the* ——— *day of* ——— *in the* ——— *year of our reign.* C.

Note; There may be four witneſſes put in one *ſubpœna.*

A ſubpœna ticket.

To Mr. A. W.

BY *virtue of his majeſty's writ of ſubpœna to you directed, and herewith ſhewn to you, you are perſonally to be before his majeſty's juſtices of the peace for the county of* ——— *at the general quarter ſeſſions of the peace to be holden for the ſaid county, at* ——— *in the ſaid county, on* ——— *the* ——— *day of* ——— *next, to teſtify the truth, and give evidence on behalf of the inhabitants of the pariſh of* ——— *in the ſaid county, againſt* A. O. *in a caſe of baſtardy. And this you are not to omit, upon pain of one hundred pounds. Dated this* ——— *day of* ——— 1753.

By the court.

C.

B. Condition

B. Condition of a recognizance to appear and give evidence.

THE *condition of this recognizance is ſuch, that if the above-bound* A. W. *ſhall perſonally appear at the next general quarter ſeſſions of the peace to be holden at* ——— *in and for the ſaid county, and then and there give ſuch evidence as he knoweth, upon a bill of indictment to be exhibited by* A. I. *of* ——— *yeoman, to the grand jury, againſt* A. O. *late of* ——— *in the ſaid county, yeoman, for the feloniouſly taking and carrying away* ——— *the property of* ——— *and in caſe the ſaid bill be found a true bill, then if the ſaid* A. W. *ſhall then and there give evidence to the jurors that ſhall paſs on the trial of the ſaid* A. O. *upon the ſaid bill of indictment, and not depart thence without leave of the court, then this recognizance to be void, otherwiſe of force.*

Examination.

IF a felony is committed, and one is brought before a juſtice upon ſuſpicion thereof, and the juſtice finds upon examination that the priſoner is not guilty; yet the juſtice ſhall not diſcharge him, but he muſt either be bailed or committed: for it is not fit that a man once arreſted and charged with felony, or ſuſpicion thereof, ſhould be delivered upon any man's diſcretion, without farther trial. *Dalt. c.* 164.

In order to which bail or commitment, the examination and information of the parties muſt firſt be taken, according to the following ſtatutes:

Two or more juſtices (1 Q.) *or one of the ſaid juſtices, before they bail a perſon apprehended for felony (if the offence is bailable) ſhall take his examination* (A) *and the information* (B) *of them that bring him, of the fact and circumſtances thereof, and the ſame, or as much thereof as ſhall be material to prove the felony, ſhall put in writing; which examination they ſhall certify (together with the bailment) at the next general gaol delivery, to be holden within the limits of their commiſſion.* 1 & 2 P. & M. c. 13. ſ. 4.

And they ſhall have power to bind by recognizance (C) *all ſuch as do declare any thing material to prove the offence, to appear at the next general gaol delivery, to be holden within the county where the trial ſhall be, then and there to give evidence againſt the party; and ſhall certify ſuch recognizance in like manner.* ſ. 5.

And if they offend in any thing herein, they ſhall be fined by the juſtices of gaol delivery. id.

In like manner, where the perſon is not bailed, but committed to ward, the juſtice or juſtices who commit him, ſhall before ſuch commitment, take the like examination and information, and ſhall put the ſame in writing within two days after the ſaid examination, and

ſhall in like manner bind over the witneſſes; and certify the whole as above. 2 & 3 P. & M. c. 10.

Shall take his examination] And in order thereunto, if by ſome reaſonable occaſion, the juſtice cannot at the return of the warrant take the examination, he may by word of mouth command the conſtable or any other perſon, to detain in cuſtody the priſoner till the next day, and then to bring him before the juſtice, for farther examination. And this detainer is juſtifiable by the conſtable or any other perſon, without ſhewing the particular cauſe for which he was to be examined, or any warrant in writing. 1 *H. H.* 585.

But the time of the detainer muſt be no longer than is neceſſary for ſuch purpoſe; for which it is ſaid, that the ſpace of three days is a reaſonable time. 2 *Haw.* 119.

But the examination of the perſon accuſed, ought not to be upon oath. 1 *H. H.* 585.

But if upon his examination he ſhall confeſs the matter, it ſhall not be amiſs that he ſubſcribe his name, or mark to it. *Dalt. c.* 164.

Which examination being voluntary, and ſworn by the juſtice or his clerk to be truly taken, may be given in evidence againſt the party confeſſing, but not againſt others. 1 *H. H.* 585. 2 *Haw.* 429.

Information of them that bring him] Or of other witneſſes; whom the juſtice may bring before him by his warrant (D) for that purpoſe. 1 *H. H.* 586. *Dalt. c.* 164.

And this information muſt be upon oath. *Dalt. c.* 164. 1 *H. H.* 586.

And therefore if a quaker is a witneſs, his affirmation muſt not be taken in this caſe; for by the 7 & 8 *W. c.* 34 *ſ.* 36. it is provided, that no quaker ſhall be examined for or againſt any perſon in any criminal cauſe, unleſs it be upon oath.

And the ſaid information being upon the trial ſworn to be truly taken, by the juſtice or his clerk, may be given in evidence againſt the priſoner, if the witneſſes be dead and not able to travel. 1 *H. H.* 586.

Or as much thereof as ſhall be material to prove the felony] Yet it ſeemeth alſo juſt and right, that the juſtices who take information againſt a felon, or perſon ſuſpected of felony, ſhould take and certify as well ſuch information, proof, and evidence, as goeth to the acquittal or clearing of the priſoner, as ſuch as maketh againſt the priſoner: for ſuch information, evidence, or proof ſo taken, is only to inform the king and his juſtices of the truth of the matter. *Dalt. c.* 165.

Shall certify at the next gaol delivery] And yet for petty larcenies, and ſmall felonies, the offenders may be tried at the quarter ſeſſions, and the examinations and informations may be certified thither. *Dalt. c.* 164.

To be holden within the limits of their commiſſion] And yet examinations taken by juſtices of the peace in one county, may be by

by them certified in another county, and there read, and given in evidence against the prisoner. *Dalt. c.* 164.

To bind by recognizance] And upon refusal, may commit the person refusing. 1 *H. H.* 586.

And the parties grieved ought to be bound, not only to give evidence, but also to prefer a bill of indictment against the prisoner. *Dalt. c.* 164.

A. Examination of a felon.

Westmorland. THE *examination of* A. O. *of* ——— *yeoman, taken before me* Lancelot Pattenson, *clerk, one of his majesty's justices of the peace for the said county* [or, in the case of bail, —*taken before us* ——— *two of his majesty's justices of the peace for the said county, and one of us of the* Quorum] *the* ——— *day of* ——— *in the* ——— *year of the reign of* ———

The said A. O. *being charged before me* [or, *us*] *by* A. I. *of* ——— *yeoman, with the felonious stealing out of the house of the said* A. I. *at* ——— *on the* ——— *day of* ——— *the following goods, to wit,* ——— *to the value of* ——— *he the said* A. O. *upon his examination now taken before me* [or *us*] *confesseth that* ——— [or, *denieth that* ———] *&c.*

B. Information of a witness.

Westmorland. THE *information of* A. I. *of* ——— *yeoman, taken upon oath before me* [as before]

C. Recognizance to give evidence.

Westmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— A. I. *of* ——— *in the said county, yeoman, did come before me* Lancelot Pattenson, *clerk, one of the justices of our said lord the king, assigned to keep the peace in the said county, and did acknowledge himself to owe to our said lord the king ten pounds of lawful money of* Great Britain, *under condition, that if he shall personally appear before the justices of our said lord the king, at the next general quarter sessions of the peace* [or, *gaol delivery*] *to be holden in and for the said county, then and there to give evidence in behalf of our said lord the king, against* A. O. *late of* ——— *who being attached, and suspected of felony, is now committed to the gaol of our said lord the king in the said county, that then this recognizance to be void, otherwise of force.*

Or thus, to prefer a bill of indictment, and give evidence.

Westmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— A. I. *of* ——— *in the said county, yeoman, personally cam-*

came before me Lancelot Pattenſon, *clerk, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and acknowledged himſelf to owe to our ſaid lord the king the ſum of——— of good and lawful money of* Great Britain, *to be made and levied of his goods and chattels, lands, and tenements, to the uſe of our ſaid lord the king, his heirs, and ſucceſſors, if he the ſaid* A. I. *ſhall fail in the condition indorſed.*

J. P.

The condition of the within written recognizance is ſuch, that whereas one A. O. *late of ——— was this preſent day brought before the juſtice within mentioned by the within bounden* A. I. *and was by him charged with the felonious taking and carrying away ——— of the goods of him the ſaid* A. I. *and thereupon was committed by the ſaid juſtice to the common gaol in and for the ſaid county: If therefore he the ſaid* A. I. *ſhall and do at the next general quarter ſeſſions of the peace* [or, *gaol delivery*] *to be holden in and for the ſaid county, prefer, or cauſe to be preferred, one bill of indictment of the ſaid felony againſt the ſaid* A. O. *and ſhall then alſo give evidence there concerning the ſame, as well to the jurors that ſhall then inquire of the ſaid felony, as alſo to them that ſhall paſs upon the trial of the ſaid* A. O. *that then the ſaid recognizance to be void, or elſe to ſtand in full force for the king.*

D. Warrant for a witneſs.

Weſtmorland { To the conſtable of ———

WHEREAS *oath hath been made before me ——— one of his majeſty's juſtices of the peace in and for the ſaid county, by* A. I. *of ——— yeoman, that he the ſaid* A. I. *was lately robbed at ——— and that he hath good cauſe to believe that* A. W. *of ——— is a material witneſs to prove by whom the ſaid robbery was committed: Theſe are therefore to require you to cauſe the ſaid* A. I. *forthwith to come before me, to give ſuch information and evidence as he knoweth concerning the ſaid offence, that ſuch further proceeding may be had therein, as to the law doth appertain. Given under my hand and ſeal at ——— in the ſaid county, the ——— day of ———*

Exiſſe

Excise and Customs.

AS the customs and excise, so far as justices of the peace, constables and other peace officers, are concerned therein, are in some measure connected and interwoven with each other; it is thought proper here to represent them together, that the reader may at once have a full and distinct comprehension of the whole.

I. Of the customs in general.
II. Of the excise in general.
III. Of the several goods in particular, under the management of the commissioners of the customs and excise.

I. Of the customs in general.

Note; There are two books of rates for ascertaining the values of goods on importation, according to which the customs shall be paid; the one, signed by Sir *Harbottle Grimston*, baronet, speaker of the house of commons, referred to, established, and confirmed, by the act of tonnage and poundage 12 *C.* 2. *c.* 4. The other, signed by *Spencer Compton*, esquire, speaker of the house of commons, being an additional book of rates of goods imported, not particularly specified in the former book of rates: The latter of which, as being part of the act it self, is inserted in the statutes at large, 11 *G.* *c.* 7. but the former, altho' it is as necessary to be known, yet being no part of the act, is not inserted therein; but may be found in *Cay*'s abridgment.

Appointing and swearing commissioners.

1. When any commission shall be issued for constituting commissioners of the customs, two of them first named in the commission shall be sworn before the chancellor, or chief baron of the exchequer, or master of the rolls, *for the true and faithful execution, to the best of their knowledge and power, of the trust committed to their charge and inspection, and that they will not take or receive any reward or gratuity, directly or indirectly, other than their salaries, and what shall be allowed them from the crown, or the regular fees established by law, for any service to be done, in the execution of their employment in the customs, on any account whatsoever.* 6 W. c. 1. s. 5.

And every other of the commissioners and patent officers, and every of their deputies, clerks, or servants, and all other officers who shall have any employment in or about the customs, shall at their admission, if it is within the ports of *London*, take the said oath before two commissioners; and elsewhere, before two justices of the peace in the county, town, or place, where his employment

ment shall be: And every person not taking such oath, shall forfeit his office. *id.*

And the persons hereby respectively authorized to administer the oath, shall certify the taking thereof, to the next sessions to be held for the county or place where the oath was administred, to be kept amongst the records. *id. s.* 6.

In what cases they only can make seizures.

2. By the 13 & 14 *C.* 2. *c.* 11. No ship or goods shall be seized as forfeited for unlawful importation or exportation, or nonpayment of customs, but by officers of the customs. *s.* 15.

But by the 8 *G. c.* 18. Spirituous liquors, *British* or foreign, and all foreign excisable liquors forfeited, together with the casks or other package, may be seized by any officer of the customs or excise, or by such persons as shall be deputed by warrant from the lord treasurer, or under treasurer, or by special commission under the great or privy seal; but by no other person. *s.* 24.

And therefore no others have power, unless where it is specially given, as it is in some cases hereafter following, by statute.

Isle of man, as to customs.

3. No drawback shall be allowed for goods exported to the *Isle of Man*; and none shall be imported from thence, but of the produce thereof. 12 *G. c.* 28. *s.* 21, 22, 23.

Shipping or landing goods without warrant.

4. If any goods shall be laden or taken in from the shoar, into any barge, hoy, wherry, or boat, to be carried aboard any ship outward bound; or laden or taken in out of any ship coming in from foreign parts, without a warrant and presence of an officer of the customs; such barge, hoy, wherry, or boat shall be forfeited; and the wharfinger offending shall forfeit 100*l.* and the master, purser, boatswain, or other mariner of any ship inward bound, consenting thereunto, shall forfeit the value of the goods so unshipped; half to the king, and half to him that shall sue. 13 & 14 *C.* 2. *c.* 11. *s.* 7.

And if any carman, porter, waterman, or other person, shall assist in the taking up, landing, shipping off, or carrying away, any such goods; such person, being apprehended by the warrant of any justice of the peace, and the same being proved by the oath of two witnesses, the said offender for the first offence shall by the justice be committed to the next gaol, there to remain till he find surety of the good behaviour for so long time until he be discharged by the lord treasurer, chancellor, under treasurer, or barons of the exchequer; and for a second offence, he may by any justice of the peace as aforesaid, be committed to the next gaol, there to remain for two months without bail, or until he shall pay to the sheriff 5 *l.* for the king's use, or until he shall be discharged by the court of exchequer as aforesaid. *id.*

Power of justices in case of ships, cattle, and carriages forfeited.

5. And here, on occasion of the forfeiture of the boat or vessel, mentioned in the preceding section, it is proper to take notice of a general clause in the statute of 8 *G. c.* 18. which brings the cognizance not only of the said forfeiture, but also of several others hereafter following, under the jurisdiction of the justices of the peace, and consequently enlarges considerably this title relating to the customs; to wit, In regard that the keeping and maintaining the horses seized, from the time of seizure, to the time of condemnation in the court of exchequer, is very chargeable, and the

charge

charge of condemning such vessels, boats, and horses, is very great; therefore it is enacted, that all seizures of vessels or boats of 15 tons or under, by virtue of any act relating to the customs, for carrying uncustomed or prohibited goods, or for relanding debenture goods; and all seizures of horses, or other cattle, or carriages for carrying such goods, may be heard and determined in such manner as is appointed by the act of 6 *G. c.* 21. except as therein excepted; that is to say, All such seizures may in a summary way be determined by two justices of the peace residing near the place where the seizure is made; who shall summon the party accused, and on appearance or default proceed to hear and give judgment, and issue warrants for sale of such as shall be by them condemned: whose judgment shall not be liable to any appeal or *certiorari*. 8 *G. c.* 18. *s.* 16.

Justices on trial to proceed on the merits.

6. And by the 9 *G.* 2. *c.* 35. In trials of seizures, the justices shall proceed to the merits of the cause, without inquiring into the form or manner of seizure. *s.* 34.

Officer on trial need not prove his commission.

7. And if any question shall arise, whether any person be an officer of the customs, proof shall be admitted, that such person was reputed to be, and had acted in such office, and at the time when the matter in controversy was done, without proving or producing the commission. 11 *G. c.* 30. *s.* 32.

Proof to lie on the owner.

8. And if any dispute shall arise, whether the customs have been paid; the proof shall lie on the owner, and not on the officer. 12 *G. c.* 28. *s.* 8.

Goods relanded after drawback.

9. If any foreign goods specified in any certificate, whereupon any drawback is to be made, or debenture to be made forth for any such drawback, shall not be really and *bona fide* shipped and exported (danger of the seas and enemies excepted), or shall be landed again, unless in case of distress to save the goods from perishing, which shall presently be made known to the principal officers of the port; then not only all such certificate goods shall be forfeited, but also the person relanding the same, or concerned therein, or to whose hands they shall knowingly come, or by whose privity they are relanded, shall forfeit double value of the drawback, together with the vessels, boats, horses, cattle, and carriages, made use of in landing or carrying the same; half to the king, and half to him that shall inform, seize, or sue in the courts at *Westminster*. 8 *An. c.* 13. *s.* 16. But by the clause abovementioned, the boats, cattle, and carriages, may be recovered before the justices of the peace.

Unshipping with intent to land.

10. By the 8 *An. c.* 7. If any goods shall be unshipped, with intention to be landed, without paying customs, or if any prohibited goods shall be imported; then not only the said goods shall be forfeited, but also the persons assisting or concerned therein, or to whose hands they shall come, shall forfeit treble value, together with the vessels, boats, horses, and other cattle, and carriages; half to the king, and half to him that shall seize or sue. *s.* 17.

Power to search.

11. Any person authorized by writ of assistants out of the exchequer, may take a constable or other publick officer near, and in the day time enter any house or place, and in case of resistance

break open doors, chests, and other package, there to seize, and from thence to bring goods prohibited and uncustomed, and secure them in the king's warehouse. 13 & 14 *C.* 2. *c.* 11. *s.* 5.

Goods passing may be stopped and seized.

12. If prohibited or customable goods shall be found by any officer of the customs, in a bark, hoy, lighter, barge, boat, or wherry on the water; or coming directly from the water side, without the presence of an officer; or if such goods shall, on information of a credible person, be found in any house or place, on search made as by the said statute of 13 & 14 *C.* 2. *c* 11. such officer may stop and put the said goods in the king's warehouse, until the claimer shall make proof before the commissioners, if it be in the port of *London*, that the duties have been paid or secured, or that the same had been bought in a lawful way of trade, and that such person verily believes the duties to have been paid, or that the said goods had been compounded for, or condemned in the exchequer, or been otherwise delivered by writ of that court, and that the prohibited goods had been compounded for, or condemned, or otherwise delivered, as aforesaid; in which case, the goods shall be delivered without delay or charge. And if the goods be stopped in any other port, the claimer shall make the like proof and deliver the same to the collector, or in his absence to one of the other principal officers of the port, which proof shall forthwith be transmitted to the commissioners for their directions touching the delivery of the goods, or for seizing the same and prosecution. 6 *G.* *c.* 21. *s.* 39.

Provided such proof be made within ten days; in failure whereof the goods may be seized and prosecuted as by the laws against the importation of prohibited or uncustomed goods. *s.* 40.

If on such prosecution, where no application hath been made to the commissioners or officers aforesaid, and not otherwise, the property of the goods shall be claimed, and the question shall arise whether the duties were paid, or the goods had been compounded for, or condemned, or otherwise delivered by writ out of the exchequer, or bought in a lawful way of trade, the proof shall lie on the claimer; and if the claimer recovers his goods, he shall have costs likewise, which shall be reckoned as a full satisfaction for damages. *s.* 41.

Where the claimer shall make proof, either by oath before a justice of the peace, or otherwise, to the satisfaction of the commissioners or officers of the customs, so as to induce them to order a delivery of the goods, and if the owner shall receive any damage by such stop; he may bring his action for his reasonable damages. *s.* 42.

But the officer, if he pleases, may prosecute, notwithstanding the directions of the commissioners; in which case he shall be liable to be sued by the owner for recovery of his goods with full costs: or if the commissioners shall give no directions for delivery of the goods, the owner nevertheless may sue for them with costs and damages. *s.* 43.

Goods taken in at sea.

13. If any foreign goods shall be taken in at sea, or put out of any ship, within four leagues from the coast, without payment of the customs and other duties (unless in case of necessity, or for a

lawful reason, of which the master shall give immediate notice and make proof, before the chief officer of the customs of the first port where he shall arrive); the same shall be forfeited, and every person aiding or concerned therein shall forfeit treble value; and the vessel into which the same shall be taken, shall be forfeited, not exceeding 100 tuns; and the master of the vessel out of which they are taken, shall also forfeit treble value; half to the king, and half to him that shall seize or sue. 9 *G* 2. *c*. 35. *s*. 23.

Officers may search coasting vessels.

14. Any officer of the customs or excise (producing his warrant or deputation, if required) may go on board any coasting vessel, and search for prohibited and uncustomed goods, and continue on board during the vessel's stay within the limits of the port; and if any person shall obstruct him, he shall forfeit 100 *l*. 9 *G*. 2. *c*. 35. *s*. 29.

Persons lurking within five miles of the coast.

15. On oath made before a justice of the peace, that any person is lurking within five miles of the sea coast or any navigable river, and there is reason to suspect that he waits with intent to be aiding in running of goods, the justice may grant his warrant to bring him before him; and if he shall not give a satisfactory account of himself and his employment, or otherwise make it appear that he is not concerned in any clandestine or unlawful business, he shall be committed to the house of correction, to be whipt and kept to hard labour not exceeding one month: And the commissioners of the customs or excise shall cause to be paid to the informer a reward of 20*s*. for each offender. 9 *G*. 2. *c*. 35. *s*. 18.

But if such person shall desire time for clearing himself, he shall not be punished by whipping or other correction, but committed to the common gaol till he shall so do, or till he find security not to be guilty of any the said offences. *s*. 19.

Buying or receiving run goods.

16. If any person shall knowingly receive or buy any run goods; he shall on conviction (after summons) by confession or oath of one witness, before one justice where the offence shall be committed or the offender shall be found, forfeit 20 *l*. half to the informer, and half to the poor, by distress; for want of distress, to be committed to prison for three months. 8 *G*. *c*. 18. *s*. 10.

Concealing run goods.

17. And by the 11 *G*. *c*. 30. If any person shall harbour, keep, or conceal, or suffer to be harboured, kept, or concealed, any prohibited or run goods liable to pay customs; he shall (whether he claim any property in them or not) forfeit the same, and treble value, to be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*, half to the king, and half to him that shall sue. *s*. 16.

Offering to sale run goods.

18. And if any person shall offer to sale any prohibited goods, or which have been, or are by him pretended to have been run; the same, together with the package shall be forfeited, and be seized by the party to whom they are offered to sale, or by any officer of the customs or excise: Provided that if the seizure is within the bills of mortality, then within 24 hours, if elsewhere, within 48 hours, they be put into the king's warehouse near the place of seizure, and if it be far from any such warehouse, then in some excise office near. 11 *G*. *c*. 30. *s*. 18.

And the person offering them to sale, shall also forfeit treble value. *s.* 19.

And the said goods, if sold, may be seized (with the package) from the buyer, either by the seller or any such officer. *s.* 20.

And the buyer shall also forfeit treble value. But both buyer and seller shall not be prosecuted for the same goods, but whether of them shall first prosecute the other shall be discharged; but if prosecution shall not be commenced in a month, the warehouse keeper may prosecute. *s.* 21.

Which said forfeitures shall be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; half to the king, and half to him that shall sue. *s.* 39.

Porter carrying run goods.

19. All porters, and others, knowingly carrying run or prohibited goods, and who shall be convicted thereof (on appearance or default) on the oath of one witness, or confession, before one justice where the offence shall be committed, or the offender found, shall forfeit treble value, half to the informer, and half to the poor, to be levied by distress by warrant of such justice, and for want of distress to be committed to the house of correction, to be whipt and kept to hard labour not exceeding three months. 9 *G.* 2. *c.* 35. *s.* 21.

Persons armed or disguised carrying run goods.

20. Persons passing with foreign goods landed without entry, within 20 miles of the coast, if they be more than five in number, or armed, or disguised, or who shall forcibly resist the officers of the customs or excise in seizing run goods, shall be guilty of felony, and transported for seven years. 8 *G.* *c.* 18. *s.* 6.

But if any offender shall in two months after his offence, and before conviction, discover his accomplices, so as two or more be convicted; he shall have a reward of 40 *l.* if the value of the run goods exceed 50 *l.* and shall be acquitted. *s.* 7.

And any other person discovering any one offender, in three months, so as he be convicted, shall have in like manner 40 *l.* over and above what he may be intitled to on account of the said run goods. *s.* 8.

And by the 9 *G.* 2. *c.* 35. Persons being two or more in company, who shall be found passing within five miles from the coast, or from any navigable river, with one or more horses, or with any cart or carriage, whereon there shall be laden more than six pounds of tea, or spirituous liquors exceeding five gallons, not having paid the duties, and not having a permit, or any other foreign goods of above 30 *l.* value, landed without entry and payment of duties, and shall carry any offensive arms, or wear any disguise, or shall forcibly obstruct, or resist any officer of the customs or excise in seizing or securing any prohibited, uncustomed, or run goods, or other execution of their office, shall be deemed runners of foreign goods, within the meaning of the said act of 8 *G.* *c.* 18. altho' no proof shall be made that such goods were run, or had not been entred and paid duty; but the proof of such entry and payment, and how they came by the goods, shall lie on such persons: and every person convicted of any such offence, shall be guilty of felony, and transported for seven years. *s.* 13.

And

And all the goods so found, weapons, horses, cattle, carriages, and their furniture, chests, bags, casks, and other package, shall be forfeited. *s.* 14.

And if any officer or other person shall lose any limb, or be otherwise maimed or dangerously wounded by any offender last mentioned, or in endeavouring to apprehend him, he shall on the conviction of such offender have a reward of 50 *l.* over and above any other reward he may be intitled to by this act. *s.* 15.

And if any person be killed in endeavouring to apprehend such offender, his executors or administrators (on certificate under hand and seal of the judge of assize for the county where the fact was done, or of the two next justices of the peace, of such person being so killed) shall have 50 *l.* over and above any other reward they may be intitled to by this act. *s.* 15.

And if any person shall, in three months after such last mentioned offence committed, discover to the commissioners of the customs or excise, any offender so as he be convicted; he shall have 50 *l.* over and above any other reward he may be intitled to by any law. *s.* 16.

And the commissioners of the customs or excise shall cause the rewards to be paid out of the said revenues, on producing a certificate under the hand of the judge certifying the conviction, or on producing such certificate of the person being killed: and if any dispute shall arise between the persons intitled to the reward, the same shall be adjusted by the commissioners. *s.* 17.

Apprehending riotous smugglers.

21. And upon information on oath before a justice of the peace, that any persons, to the number of three or more, are or have been assembled, to be aiding in the clandestine running, landing, or carrying away prohibited and uncustomed goods, or to rescue them after seizure, and armed with fire arms or other offensive weapons; he shall grant his warrant to the constables and other peace officers, requiring them to take to their assistance as many as may be thought necessary for apprehending such persons: and he may, if on examination he find cause, commit them to the next county gaol, there to remain without bail or mainprize, until they be discharged by due course of law: and such persons, on conviction of their being assembled and armed as aforesaid, shall be adjudged guilty of felony, and transported for seven years. 9 *G.* 2. *c.* 35. *s.* 10.

And the apprehender for every person convicted shall have a reward of 50 *l.* immediately after conviction and demand made, tendring a certificate under the hand of the judge, certifying the conviction, and that he was taken by the person claiming the reward. *s.* 11.

And if any person shall lose a limb, be maimed, or dangerously wounded, in apprehending or endeavouring to apprehend, or pursuing such offender; he shall on such conviction have a reward of 50 *l.* over and above any other reward that he shall be intitled to by this act. *s.* 11.

And if any person shall be killed in taking, or endeavouring to take such offender; his executors or administrators (on certificate

under the hand and seal of the judge of assize of the county where the fact was done, or of the two next justices of the peace, of such person being so killed) shall have a reward of 50 *l.* over and above any other reward they may be intitled to by this act. *s.* 11.

And if any offender shall in three months after his offence, and before his conviction, discover two or more accomplices, to the commissioners of the customs or excise, so as two be convicted; he shall have 50 *l.* for every person so convicted, and be discharged of his offence. *s.* 12.

The said rewards to be paid as in the last section.

Smugglers indemnified for offences before May 1. 1745.

22. By the 18 *G.* 2. *c.* 28. All persons, who before *May* 1. 1745. have incurred any penalty for running of goods are indemnified. But if any person having been guilty of any such offence, for which he is liable to be transported, shall take the benefit of this act, and afterwards commit any the like offence; he shall be guilty of felony without benefit of clergy.

Outlawed smugglers.

23. And by the 19 *G.* 2. *c.* 34. If any persons, to the number of three or more, armed with fire arms or other offensive weapons, shall be assembled in order to assist in the exportation of goods prohibited to be exported, or in running any prohibited or uncustomed goods, or goods liable to pay duties which have not been paid, or in relanding goods after drawback, or in rescuing the same after seizure, or in rescuing any person apprehended for any offence made felony by any act relating to the customs or excise, or in preventing his being apprehended; or if any person shall have his face blacked, or wear any disguise, when passing with such goods; or shall forcibly hinder or assault any officer in the seizing such goods, or dangerously wound any officer attempting to go on board any vessel, or shoot at or wound him when on board; he shall be guilty of felony without benefit of clergy. *s.* 1.

And persons charged with any the said offences, before a justice of the peace, by information on oath of one or more credible persons to be subscribed by him or them, the justice shall forthwith certify the same under his hand and seal, and return the information to one of the secretaries of state, who shall lay the same before the king in council; who may thereon make his order, commanding the offender to surrender in 40 days after the first publication thereof in the gazette, to the lord chief justice, or any other of the justices of the king's bench, or to some justice of the peace who thereon shall commit him to gaol, to answer the charge against him according to due course of law: Which order the clerks of the privy council shall cause to be forthwith published in the two successive gazettes, and to be transmitted to the sheriff where the offence was committed; who shall in 14 days cause the same to be proclaimed between ten in the morning and two in the afternoon, in the market places, on the market days, of two market towns in the same county, near the place where the offence was committed; and a copy of the order shall be affixed on some publick place in the said towns: And if such offender shall not surrender pursuant to such order, or escape after

surrender,

surrender, he shall be attainted of felony without benefit of clergy. *s.* 2.

And if any person after the time appointed for surrender, shall knowingly harbour such offender; he shall, on conviction within one year, be guilty of felony, and transported for seven years. *s.* 3.

And every person who shall take, or discover so that he may be taken, any person so advertised and not surrendring, and cause him to be brought before a judge of the king's bench, or justice of the peace for *London* or *Middlesex* (who shall commit him to *Newgate*), shall receive 500*l.* in one month after execution awarded, from the commissioners of the customs or excise respectively: And if an offender, against whom no such order in council shall have been made, shall himself so discover or apprehend any other against whom an order hath been made; he shall be acquitted of all his own offences for which no prosecution is then commenced, and shall also have his share of the *præmium:* And if any person shall be maimed or grievously wounded in apprehending such offender; he shall receive 50*l.* over and above such other reward as he may have as apprehender: And if any person shall be killed in apprehending, his executors or administrators shall receive 100*l.* *s.* 10.

But nothing herein shall prevent ministers of justice from taking such offender by the ordinary course of law; but if he shall be taken before the expiration of the time limited for his surrender, no further proceedings shall be had upon the order made in council, but the offender shall be brought to trial by due course of law. *s.* 4.

And if any offender, before order for his surrender, shall discover two or more accomplices, so as they be convicted; he shall receive 50*l.* for each, and be discharged of all offences for which no prosecution shall be then commenced. *s.* 11.

Officers may oppose force with force.

24. If any persons passing in a publick and avowed manner, with prohibited or uncustomed goods, and armed with pistols, guns, cutlasses, or other offensive weapons, shall molest or resist the officers of the customs or excise, endeavouring to seize the same, by beating, maiming, or wounding them, or any person assisting them; they may oppose force with force: and if any person so resisting the officers be wounded, maimed, or killed; such officers, or persons assisting them in their defence, may plead the general issue, and give this act and the special matter in evidence; and all justices of the peace, and others, before whom they shall be brought, shall admit them to bail. 9 *G.* 2. *c.* 35. *s.* 35.

Dangerously hurting an officer, finable.

25. By the 13 & 14 *C.* 2. *c.* 11. Where any officer of the customs shall be by any person armed with club or any manner of weapon, forcibly hindred, affronted, abused, beaten, or wounded, to the hazard of their lives, either on board any ship, or on the land or water in execution of their office; every person so abusing any such officer or his deputy, or such as shall act in his aid or assistance, shall by the next justice or other magistrate be committed to prison to the next quarter sessions; and the said

ſeſſions ſhall puniſh him by fine, not exceeding 100 *l.* and the offender to remain in priſon, till he be diſcharged by order of the exchequer both of the fine and of the impriſonment, or diſcover the perſon that ſet him on work. *ſ.* 6.

By eight or more, tranſportation.

26. And by the 6 *G. c.* 21. If any officer of the cuſtoms be forcibly hindred, wounded, or beaten, in the due execution of his office, by any perſons armed with any manner of weapon, tumultuouſly aſſembled by day or night, to the number of eight or more; the offenders ſhall be tranſported for any term not exceeding ſeven years. *ſ.* 34, 35.

And if any offender ſhall in two months after his offence, and before conviction, diſcover his accomplices ſo as two be convicted, he ſhall have 40 *l.* reward for each, and be acquitted. *ſ.* 36.

And if any other perſon ſhall in three months diſcover any offender ſo as he be convicted, he ſhall have 40 *l.* over and above any other reward on account of the run goods. *ſ.* 37.

The ſame to be paid by the receiver general, or caſhier of the cuſtoms, on producing the judge's certificate. *ſ.* 38.

Oppoſed on ſhipboard, tranſportation.

27. And by the 9 *G.* 2. *c.* 35. more generally it is enacted, that if any officer of the cuſtoms or exciſe, being on board any ſhip, be forcibly hindred, wounded, or beaten, in execution of his office, either by day or night; the offender ſhall be tranſported for ſeven years. *ſ.* 28.

Hundred ſhall anſwer damages.

28. And by the 19 *G.* 2. *c.* 34. *ſ.* 6. If any officer or other perſon employed in ſeizing any goods forfeited for being prohibited or uncuſtomed, or for not having paid duty, or by virtue of any law to prevent the exportation of goods, or in endeavouring to apprehend offenders againſt this act, ſhall be beaten or killed, or the goods ſeized be reſcued; the hundred ſhall anſwer damages, and alſo pay 100 *l.* to the executors or adminiſtrators of ſuch perſon killed, ſo as the ſum for beating exceed not 40 *l.* nor for the loſs of goods 200 *l.* to be recovered and levied as in caſes of robbery by the 8 *G.* 2.

But no perſon ſhall recover damages for ſuch beating or loſs of goods, unleſs he give notice in four days to two inhabitants near, and in eight days make oath before a juſtice, whether he knew any of the perſons concerned, and if he did, he ſhall be bound over to proſecute; and unleſs, beſides the ſaid notice and recognizance, he give ſuch alſo as perſons robbed by the 8 *G.* 2. are directed to give. *id. ſ.* 7.

And where the offender ſhall be convicted in ſix months, the hundred ſhall not be liable. *ſ.* 8.

Alſo the action againſt the hundred muſt be commenced within a year. *ſ.* 9.

Felonies in relation to the cuſtoms may be tried in any county.

29. Offences relating to the cuſtoms or exciſe, made felony by any act, may be tried in any county; but the attainder ſhall work no corruption of blood, loſs of dower, or forfeiture of lands. 19 *G.* 2. *c.* 34 *ſ.* 5.

II. Of the excise in general.

1. One principal head office of excise shall be kept in *London*, or within ten miles thereof, to which all other offices in the kingdom shall be subordinate and accountable; which said office shall be managed by such commissioners as the king shall appoint. 12 *C.* 2. *c.* 24. *s.* 46. 5 *W.* *c.* 20. *s.* 16. Head office, and commissioners.

2. And all places within the bills of mortality shall be under the immediate care and management of the said head office; and such, and so many subordinate commissioners, and subcommissioners, and other officers shall be appointed by the king in other places, as he shall think fit. 12 *C.* 2. *c.* 24. *s.* 48. Subcommissioners.

3. And the excise office in all places where it shall be appointed, shall be kept open from eight in the morning, till two in the afternoon. 23 *G.* 2. *c.* 26. *s.* 12. Office when to be kept open.

4. And the commissioners or subcommissioners shall appoint under their hands and seals, such persons as they shall think needful in each market town, to be there upon every market day, in some known and publick place, for receiving entries and duties, and performing all other things touching the revenue of excise: And if such office shall not be so kept in each market town, the commissioners or others neglecting or refusing, shall for every market day forfeit 10 *l.* And such person as shall come to such market town to make his entry or payment, and tender the same accordingly, and be able to prove such tender by oath of one witness, shall not be liable to any penalty for such weekly or monthly entries or payments, as should have been made or paid on such market day. 15 *C.* 2. *c.* 11. *s.* 10. Office in market towns.

5. The commissioners or subcommissioners in their respective circuits and divisions, shall constitute under their hands and seals, such and so many gagers as they shall find needful. 12 *C.* 2. *c.* 24. *s.* 33. Gagers.

6. No person shall be capable of intermeddling with any office relating to the excise, until he shall before two justices in the county where his employment shall be, or before a baron of the exchequer, take the oaths of allegiance, supremacy (and abjuration), together with this oath following; Officer's oath.

You shall swear to execute the office of ——— *truly and faithfully, without favour or affection, and shall from time to time true account make and deliver to such person and persons as his majesty shall appoint to receive the same, and shall take no fee or reward for the execution of the said office, from any other person than from his majesty, or those whom his majesty shall appoint in that behalf.* 12 C. 2. c. 24. s. 47.

And the justices shall certify the taking of such oath, to the next quarter sessions, there to be recorded. *s.* 48.

And the officer shall also enter a certificate thereof with the auditor of the excise: And if any such person shall act before he hath taken the said oaths, and entred his certificate with the auditor

auditor aforesaid, he shall forfeit 50*l.* a month. 15 *C.* 2. *c.* 11. *s.* 27.

Penalties by the excise laws.

7. In the act of the 24 *G.* 2. *c.* 40. There is a general clause, which has a controlling influence on all that hereafter follows in this large title; which is this: *All fines, penalties, and forfeitures, imposed by this or any other act relating to the duties of excise, or other duties under the management of the commissioners of excise, shall be sued for, levied, recovered, or mitigated by such ways and means as any fine, penalty, or forfeiture is or may be recovered or mitigated by any law or laws of excise, or in the courts at* Westminster, *and shall be half to the king, and half to him that shall inform or sue.* s. 33.

By two justices.

2. That is to say, *If it is within the limits of the chief office in* London, *they shall be determined by the commissioners (or any three of them,* 2 G. 2. st. 2. c. 16. s. 4, 5.) *or, in case of appeals, by the commissioners of appeals: in all other places, they shall be heard and determined by any two or more justices of the peace, residing near to the place where such forfeitures shall be made, or offence committed: And in case of neglect or refusal of such justices by the space of* 14 *days next after complaint made, and notice thereof given to the offender; then the subcommissioners may hear and determine the same; And if the party find himself aggrieved by the judgment given by the said subcommissioners, he may appeal to the next quarter sessions, whose judgment therein shall be final. Which said commissioners for appeals, and chief commissioners for excise, and all justices of the peace, and subcommissioners aforesaid, are required upon any complaint or information exhibited and brought, of any such forfeiture made or offence committed, to summon the party accused, and upon his appearance or contempt to proceed to the examination of the fact, and on due proof made thereof, either by the voluntary confession of the party, or by the oath of one credible witness, to give judgment or sentence, and to issue warrants under their hands, for levying the same on the goods and chattels of the offender, and to cause sale to be made thereof, if not redeemed in* 14 *days; and for want of sufficient distress, to imprison the party offending till satisfaction be made.* 12 C. 2. c. 24. s. 45.

Residing near] Mr. *Shaw*, who seems to have taken some pains on this article (and after whom Mr. *Barlow* hath copied without owning it) saith hereupon, that where the *next* justices are impowered to proceed in any matter, they and no other ought in such case to act; but where it is only directed, that the justices residing *near* shall do such a thing, those words are not restrictive, but only directory, and any justices, altho' not the *next* justices, may proceed therein. *Shaw Exc.*

But where the act says, that *any two justices residing near* to the place where the forfeiture shall be made, or the offence committed, shall hear and determine the matter, it doth not intend that the justices of a county at large, dwelling near to a town corporate, which hath justices of its own, and an exclusive charter, shall have power to intermeddle with regard to offences committed within such town corporate; but only to vest the jurisdiction in

justices

justices of counties, cities, and places, with respect to their local jurisdictions within such places. *T.* 14 *G.* 2. *Talbot* and *Hubble. Str.* 1154.

Upon any complaint or information exhibited] By these words it is not necessary that the information be exhibited *in writing*; but if it is a verbal information, the justices ought to make a record thereof, and of the time and place, when and where exhibited, which must be expressed in the present, and not in the time past: But to save the justices that trouble, it is usual for the informer to prepare his information in writing; and by way of preface thereto, to make a memorandum of the time and place of the laying such information, leaving therein blanks for the names of the justices, and the day and month and year and place when and where laid; and when those blanks are filled up by direction or consent of the justices, then it becomes a record made by them. The mentioning the place where the information is laid, is, that it may appear that the prosecution was in the proper county; and therefore tho' it may happen, that for laying the information, the prosecutor may be obliged to attend one justice in one town, and another justice in another town, it must not be mentioned, that the information was laid at both towns, for that would be absurd; but in such cases it is usual to express that the information is laid at the town where the hearing is intended to be. *Shaw Exc.*

Proceed to the examination of the fact] And by the 9 *G.* 2. *c.* 35. it is enacted, that in trials of seizures, the justices shall proceed to the merits of the cause, without inquiring into the form or manner of seizure. *s.* 34.

Give judgment] Altho' it hath been said, that whatever is recorded by the justices or their order, ought to be expressed in words of the present time and tense; yet that doth not make it necessary, nor is it indeed practicable, that all that is to be so entred should actually be entred at the instant of time when such judgment is given; for such entring the whole at that time would hinder the dispatch of business, and delay the hearing of causes, and therefore may be done at any convenient time after; which if it be agreeable with, and according to such short minutes or notes as are then taken by such justices, it will be as authentick as if it had been entred at the instant of time in which such order was made, or judgment was given. *Shaw Exc.*

And to issue warrants under their hands] Although it is here only directed, that the warrant shall be under the *hands* of the justices; yet since it is generally implied in all warrants, that they be both under *hand* and *seal*, it is safe at least, if not necessary that this warrant also amongst the rest, be both *signed* and *sealed.*

And to cause sale to be made thereof if not redeemed in 14 *days*] But by the 27 *G.* 2. *c.* 20. the justices may not order the distress to be detained more than eight days, nor less than four.

For

For want of sufficient distress] Mr. *Shaw* and Mr. *Barlow* are of opinion, that where there are some goods, but not sufficient for satisfying the judgment, yet those goods may be applied for that purpose so far as they shall extend, and the defendant shall be imprisoned for the residue; which may seem hard sometimes, when the defendant shall perhaps satisfy nearly the whole sum, and moreover be imprisoned as much as if he had paid nothing; and it hath been adjudged in other cases, that a man shall not first pay part, and then be imprisoned for the residue, but shall either pay the whole, or be imprisoned for the whole: but perhaps the distinction may be this; where there is a limited time of imprisonment, as for instance three months, there the defendant shall not pay part, and then be imprisoned the whole three months, which would be to punish him both ways; but where the imprisonment is till the penalty shall be paid, there the payment of the penalty is the thing chiefly regarded, and the imprisonment is not intended as a punishment, but as a mean to compel the payment of the penalty, and if part of it is paid already, the inlargement may come the sooner, by payment of the residue.

Imprison the party till satisfaction be made] But before any warrant can be made to arrest and imprison the person of the defendant, there must be first a warrant to seize the utensils in custody of such offender, and the offender's goods; and that warrant must be returned: all which must be done, before any warrant can be regularly made, to arrest and imprison the defendant's person. Which method ought to be observed, tho' perhaps it may be well known by, or sufficiently proved before the justices, that all the utensils and all the defendant's goods are carried off; for the law being in all cases very tender of depriving men of their liberty, it is necessary that all possible means should be used to levy the money on such goods, before the person of the defendant be imprisoned. But if a warrant to seize the utensils and the goods, be made and delivered to an officer to be executed; and if such officer, having made diligent search, cannot find any such, then a warrant may be made to arrest and imprison the person of the defendant. But then there ought to be a duplicate made of such warrant; because the keeper of the prison cannot regularly receive the offender without a warrant, and the officer ought also to have and keep a warrant for his own justification. *Shaw Exc.*

Summoning witnesses.

9. By the 7 & 8 *W. c.* 30. The commissioners and justices may summon witnesses, to appear before them at a certain day, time, and place, to be inserted in such summons, and to give evidence; and in case of neglect or refusal to appear, or if upon appearance any shall refuse to give evidence, he shall forfeit 10*l.* *s.* 24.

Officer on trial need not produce his commission.

10. If upon trial, any question shall arise, concerning the keeping of any office of excise, or concerning any persons being an officer: proof shall be admitted of the actual keeping of such office, or of such person's actually exercising such office, without proving

proving or producing the commission. 6 *G. c.* 21. *s.* 24. 11 *G. c.* 30. *s.* 32.

11. If on trial any dispute shall arise, whether the excise or other inland duties have been paid for any foreign goods seized; the proof shall lie on the owner, and not on the officer. 12 *G. c.* 28. *s.* 8. Proof to lie on the owner.

12. One or more justices shall have power to administer an oath to any person skilled in the value of goods, vessels, or carriages, mentioned to have been seized in any information exhibited before the justices, to view the same, and make return of the species, quantity, and value; and after condemnation, the said goods shall be sold where the commissioners shall think proper. 12 *G. c.* 28. *s.* 16. Sworn valuers.

13. *The justices, commissioners, or subcommissioners respectively, where they shall see cause, may mitigate, compound, or lessen the forfeiture, penalty, or fine; so as the same be not made less than double the value of the duty of excise which ought to have been paid, besides the reasonable costs and charges of such officers, or others, as were employed therein, to be to them allowed by the said justices.* 12 C. 2. c. 24. s. 46. Mitigation.

Mitigate] But it is not necessary in the mitigation, to mention or distinguish so much for the offence, and so much for the charges; but after the justices have agreed what sums to allow for the charges, the best way will be to add those two sums together, and make their mitigation to such sum, as both when added together do amount unto: as suppose the justices do intend, that the defendant shall pay 10 *l.* for the offence, and 40 *s.* for the charges, the best way will be to make their mitigation to 12 *l.* without particularly mentioning that 10 *l.* thereof is for the offence, and that the 40 *s.* is for the charges; for in all cases it is wrong to insert in judgments more words or particulars than are necessary; and it is more particularly wrong in these cases, because the mentioning such unnecessary particulars may give a handle for cavils and disputes. *Shaw Exc.*

Costs and charges] Generally, the law doth not allow any costs or charges to be recovered on any penal law; and therefore to intitle the prosecutor to costs, over and above the penalty, express words for that purpose are necessary in an act of parliament. *Shaw Exc.* But by the 27 *G.* 2. *c.* 20. the constable out of the money arising from the sale of the distress, may detain his reasonable charges of taking, keeping, and selling the same.

14. There is no appeal directed in the said statute of 12 *C.* 2. from judgments given by the justices of the peace; for whereas it is enacted, in the said statute, that *if the party find himself aggrieved by the judgment given by the subcommissioners, he may appeal to the next quarter sessions*, these words, not being general, or such as may be applied equally, as well to the judgments given by the justices, as to judgments given by subcommissioners, they must be understood as limitted and restrained to such judgments only as are given by subcommissioners, in whom the parliament (it seems) did not so intirely confide as in the justices, but have made Appeal.

the aforementioned distinction between the judgment of the one and of the other; which must be observed and pursued: And therefore, generally, there lies no appeal to the quarter sessions from the judgment given by the justices, in matters relating to the excise. *Shaw Exc.*

Nevertheless, in some particular instances, such power is given by subsequent statutes; which will be mentioned under the special heads in this title hereafter following.

By the 15 *G.* 2. *c.* 11. No appeal in any cause of excise shall be admitted, till the appellant hath deposited the single duty with the commissioners or subcommissioners, and given security to the commissioners of appeal, or justices of the peace, where the cause is to be finally adjudged, for such forfeiture as was adjudged against him; and if upon appeal the judgment be reversed, they shall restore the duty so deposited, or so much thereof as shall be adjudged on the appeal; and the party originally prosecuting shall pay double costs, but if the judgment be affirmed, the party appealing shall pay the like costs to the commissioners. *s.* 19.

And by the same statute, all differences and appeals about the excise, shall be heard in the proper county, and not elsewhere. *s.* 22.

And by the same statute, appeals within *London*, and the limits thereof, shall be within two months after judgment, and notice given or left at the dwelling house of the party; in all other places, in four months, and not otherwise.

Certiorari.

15. It is generally provided by divers statutes, that no *certiorari* shall be allowed to supersede the justices proceedings. 12 *C.* 2. *c.* 24. *s.* 50. 22 & 23 *C.* 2. *c.* 5. *s.* 14. 6 *G.* *c.* 21. *s.* 22.

Treble costs.

16. Persons sued for any thing done on any act relating to the excise, or other duties under the management of the commissioners of excise, may plead the general issue; and have treble costs. 18 *G.* 2. *c.* 26. *s.* 15.

Felonies relating to the excise, where to be tried.

17. Offences relating to the excise made felony by any act, may be tried in any county; but the attainder shall work no corruption of blood, or forfeiture of lands. 19 *G.* 2. *c.* 34. *s.* 5.

Alehousekeepers harbouring offenders.

18. Any alehousekeeper harbouring an absconded person, against whom a process of arrest hath issued, for any offence against the laws of excise or of the customs, after six days notice of such absconding in two successive gazettes, and writing fixed on the door of the parish church where he last dwelt, shall forfeit 100 *l.* and have no licence for the future. 9 *G.* 2. *c.* 35. *s* 30, 31.

Landing foreign excisable liquors before duty paid.

19. No foreign liquors, for which excise ought to be paid, shall be landed, before entry made with the officer or collector of excise, or before the excise shall be paid: and every warrant from any officer of the customs, for landing such foreign liquors, shall be signed by the officer or collector of excise in the port; on pain that the liquors landed otherwise, or the value thereof, shall be forfeited, to be recovered of the importer or proprietor. 22 & 23 *C* 2. *c.* 5. *s.* 9.

Excisable liquors carried coastwise.

20. No person bringing any excisable liquors (except beer, ale, cyder, perry, and metheglin) into any place by coast cocquet, transire, or certificate, nor any person to whom the same shall be

be consigned, shall land the same, without being entred with the officer of excise where landed; on pain of double value. 15 *C.* 2. *c.* 11. *s.* 18.

21. If any person shall conceal, or suffer to be concealed, any goods liable to the duties of excise and inland duties; he shall (whether he claims any interest in them or not) forfeit the same, and treble value. 11 *G.* *c.* 30. *s.* 16. Concealing exciſable goods.

22. If on request made by any officer of excise, to a constable to go along with him, and to be present at the doing of any thing, at the doing whereof his presence shall be necessary by any statute, he shall neglect or refuse or shall not go along with him, and be present at the doing thereof; he shall forfeit 20 *l.* 11 *G.* *c.* 30. *s.* 31. Constable to be assisting.

23. If any person shall oppose, molest, hinder, or obstruct any officer of excise, in the due execution of the powers given him by any act relating to the duties of excise; he shall forfeit 10 *l.* 6 *G.* *c.* 21. *s.* 7. Obstructing officer.

And actions of assault upon any officer of excise, may be tried in any county. 9 *G.* 2. *c.* 35. *s* 26.

Further penalties for obstructing, wounding, or killing officers, in the case of run goods, have been inserted before, in treating of the customs.

24. If any officer of the excise or customs shall deal in coffee, tea, brandy, or other exciſable liquors; he shall be incapable to hold any office in the revenue, and forfeit 50 *l.* 12 *G.* *c.* 28. *s.* 7. Officer not to be a dealer.

25. No sworn gager, or other officer, shall take any bribe, for any matter relating to the excise; on pain of 10 *l.* 15 *C.* 2. *c.* 11. *s.* 16. Officer taking a bribe.

And a further penalty upon such officer is inflicted, in divers instances hereafter mentioned.

And by the 11 *G.* *c.* 30. If any person liable to the duties of excise, or any other duties under the management of the commissioners of excise, shall give or offer to any officer of the said duties any bribe, gratuity, or reward, in order to induce him to omit his duty, or to do contrary to it; he shall forfeit 500 *l.* *s.* 40.

26. No collector, supervisor, gager, or other person concerned in charging, collecting, levying, or managing the duties of excise, or any part thereof, shall by word, message, or writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving, his vote for the choice of a member of parliament; on pain of 100 *l.* half to the poor, and half to him who shall sue in the courts at *Westminster*; and moreover he shall be incapable to hold any office of trust under the king. 5 *W.* *c.* 20. *s.* 48. Officer meddling in elections.

III. Of

III. Of the several goods in particular, under the management of the commissioners of the customs and excise: *viz.*

Ale, beer, cyder, perry, mum, metheglin, mead, sweets, verjuice, and vinegar; candles; coaches; coffee, tea, and chocolate; glass; hops; leather; linen cloth and silks; malt; paper; plate; salt; soap; spirituous liquors; starch and hair powder; wire.

I. Ale, beer, cyder, perry, mum, metheglin, mead, sweets, verjuice, vinegar.

Duty on ale and beer imported.

1. By the several acts relating to that purpose, there shall be paid by the importer before landing, for every barrel of beer or ale imported, in the whole the sum of 18 *s.*

On home ale and beer.

2. By the several acts there shall be paid in the whole, for every barrel of beer or ale above 6 *s.* a barrel, brewed by the common brewer, or any other person who shall sell or tap out beer or ale, the sum of 5 *s.* and for every barrel of 6 *s.* a barrel or under, the sum of 1 *s.* 4 *d.*

Duty on cyder and perry imported.

3. For every tun of cyder or perry imported shall be paid 17 *l.* 10 *s.* And if they are imported by foreigners, they shall pay 30 *s.* more.

Duty on cyder and perry sold by retail.

4. And by six several acts, for every hogshead of cyder and perry sold by retail, there shall be paid by the retailer, the sum of 6 *s.* 8 *d.* And by the 12 *An. st.* 1. *c.* 4. 4 *s.* more, to be paid by the first buyer or retailer. *s.* 1.

But a person buying for his own private use, and not being a dealer, shall not be charged. 28 *G.* 2. *c.* 2. *s.* 19.

And if they be used for distilling only, they shall not be charged with the said 4 *s.* 3 *G.* 2. *c.* 7. *s.* 11.

Note; Every person who shall buy any cyder or perry, or any fruit to make into cyder or perry, and shall sell any of the cyder or perry, shall be deemed a retailer. *id. s.* 2.

Duty on mum.

5. For every barrel of mum imported shall be paid the sum of 25 *s.* And moreover by the 12 *An. st.* 1. *c.* 2. and 13 *G. c.* 7. for every barrel of mum made or imported, over and above all other duties, shall be paid by the maker or importer, 10 *s.*

Duty on metheglin and mead.

6. For every gallon of metheglin or mead, sold by retail or otherwise, shall be paid by the maker 11 $\frac{1}{2}$ *d.*

Duty on sweets.

7. For every barrel of liquor made for sale, by infusion, fermentation, or otherwise, from fruit or sugar, mixed or unmixed with other ingredients, commonly called sweets or made wines, shall be paid 12 *s.* 10 *G.* 2. *c.* 17. *s.* 2. But this shall not extend to wines made of *British* grapes. *s.* 7.

Duty on verjuice.

8. Verjuice made for sale, shall pay as cyder and perry. 7 & 8 *W. c.* 30. *s.* 28.

9. For

9. For every tun of vinegar imported shall be paid 13 *l.* and if imported by strangers 30 *s.* more. And by the 18 *G.* 2. *c.* 9. 8 *l.* more for *French* vinegar, and other vinegar 4 *l.* Duty on vinegar imported.

10. For every barrel (at 34 gallons to the barrel) of vinegar, vinegar beer, or liquors preparing for vinegar, made for sale, shall be paid 11 *s.* 1 *d.* Duty on home vinegar.

Note; This shall extend to vinegar made for pickles, but not to vinegar for making white lead. 8 *An.* *c.* 7. *s.* 4, 5.

And all stale beer, returns of beer or ale, cyder, verjuice, or any other liquors proper to be made into vinegar, which shall be found in the possession of any common vinegar maker, (except such as are to be drank in his family, and which shall be kept separate for that purpose) shall be deemed vinegar, or liquors preparing for vinegar. 10 & 11 *W.* *c.* 21. *s.* 11.

11. By the 15 *C.* 2. *c.* 11. No common brewer, innkeeper, victualler, or other retailer of beer or ale, shall without first giving notice at the next office of excise, or to the commissioners, or sub-commissioners, or one of them, erect, alter, or inlarge, any tun, fat, back, cooler, or copper, and make use thereof for brewing or making any beer, ale, or worts; on pain of 50 *l.* And every other person, in whose occupation any house, outhouse, or other place shall be, where any such private tun, fat, back, cooler, or copper shall be found, shall also forfeit 50 *l.* And the same, together with all beer, ale, or worts therein, shall be taken up, seized, and forfeited. *s.* 1. Notice and entry of vessels and places for making the same.

And by the 8 & 9 *W.* *c.* 19. If any common brewer shall, without notice given at the next office of excise, set up any tun, batch, float, cooler, or copper, or alter and enlarge the same, or have any of them private or concealed; he shall forfeit 200 *l.* *s.* 8.

And the officer of excise, in the day time, and in the presence of a constable, where he shall have just suspicion, that any private back, tun, or other concealed vessel or receptacle are used by any brewer, maker, or retailer of excisable liquors, on request first made, and cause declared, may break open the door, or any part of his brewhouse, warehouse, or other room in his possession, and enter, and break up the ground in such house or room, or ground near adjoining in his possession, to search for such back, tun, or other vessel, or any pipe or conveyance leading thereto; and if he finds any private pipe or other conveyance, he may search and follow the same, and if it shall lead into any ground, house, or place in the possession of any other person, on like request, and with a constable, he may enter the same, and break open the ground, or any part of the house if occasion shall be, to follow such private pipe, in order to find out such concealed back, tun, or vessel, making good the ground or house so broken up, or giving reasonable satisfaction to the owner: And if any person shall oppose such officer, he shall forfeit 20 *l.* 7 & 8 *W.* *c.* 30. *s.* 27.

And if any *vinegar maker* shall without giving such notice, use any storehouse, warehouse, cellar, or other place for making or keeping any vinegar, vinegar beer, or liquors preparing for vinegar; he shall forfeit 50 *l.* 10 & 11 *W.* *c.* 21, *s.* 14.

In like manner the maker of *sweets* for sale shall first give such notice, of his name and place of abode, and of the rooms and places he intends to use for making or keeping of sweets or made wines; on pain of 20*l.* 10 *G.* 2. *c.* 17. *s.* 4. And any person who shall sell or use any the materials abovementioned, in making of wines, and in whose custody above two gallons shall be found, shall be deemed a maker of sweets for sale. 10 & 11 *W.* *c.* 21. *s.* 5.

In like manner, persons buying fruit to make into *cyder* or *perry* for sale, shall make entry of their storehouses, cellars, and other places, at the excise office within the district; on pain of 50*l.* 28 *G.* 2. *c.* 2. *s.* 20.

Private pipes.

12. No common brewer shall keep any pipe or stop cock under ground, or any other private conveyance, by which any beer, ale, or worts may be conveyed from one tun or brewing vessel to another, or into any other place, nor shall have any hole in any tun, batch, or float, by which any beer, ale, or worts may be conveyed into or out of the same; on pain of 100*l.* 8 & 9 *W.* *c.* 19. *s.* 4.

And the excise officer in the day time, and in presence of a constable, on request made, and cause declared, may break up the ground in any common brewhouse, or the ground near adjoining, or any wall, partition, or other place, to search for any such private pipe or other conveyance, and on finding may follow the same, and break up the ground, house, wall, partition, or other place, thro' or into which the same shall lead, and break up or cut such pipe or other conveyance, and may turn any cock to try whether it can convey as aforesaid. *s.* 5.

And if on search no such pipe or other private conveyance shall be found, the officer shall make good the ground, wall, or other place so broken up, or make satisfaction to the owner: And if any person shall oppose such officer, he shall forfeit 50*l.* *s.* 6.

But any common brewer may use any pipes, stop cocks, or other conveyances above ground, which are publick and in open view, for letting his worts out of his copper into his publick backs or coolers; and out of the same into his tuns, batches, or floats; or out of the tun into his casks. *s.* 7.

Private cellar.

13. No common brewer, innkeeper, victualler, or other retailer of beer or ale, shall use or keep any private storehouse, cellar, or other place for laying of any beer or ale, or worts, in cask; on pain of 50*l.* and every other person in whose occupation any such place shall be, shall also forfeit 50*l.* 15 *C.* 2. *c.* 11. *s.* 1. 1 *W.* *st.* 1. *c.* 24. *s.* 11.

Private person suffering liquors to be brewed in his house.

14. If any person inhabiting in a market town, city, or town corporate, or parts adjoining to a city or town corporate, where there is a common brewhouse, having and lawfully using any private brewing vessels for making beer and ale to be consumed in his own private family, shall permit any beer, ale, or worts to be brewed in his house, or other place thereunto adjoining, other than for his own family, servants, labourers, or to others by way of charity, hospitality, or free gift; or shall lend out any of his

brewing vessels, other than which are moveable and unfixt, he shall forfeit 50 *l.* 22 & 23 *C.* 2. *c.* 5. *s.* 10.

15. The gager shall at all times, as well by night as by day (and if by night, then in presence of a constable) be permitted upon his request to enter the brewhouse, and all other houses and places belonging to or used by any person brewing of beer, or by any retailer of beer, ale, worts, perry, cyder, or metheglin; and to gage all coppers, fats, and vessels in the same; and to take an account of all such liquors brewed or made therein; and thereof shall make return in writing to the commissioners or subcommissioners; which return shall be a charge upon such brewers, makers, or retailers. 12 *C.* 2. *c.* 24. *s.* 33. Gager to enter and take account.

And if any brewer shall bribe the gager to make a false return, he shall forfeit 10 *l.* and the officer taking the bribe shall also forfeit 10 *l.* 15 *C.* 2. *c.* 11. *s.* 16.

And if any such common brewer or retailer shall refuse to permit such gager to enter his brewhouse or other place aforesaid, or to gage or take account of his vessels or liquor aforesaid, he shall be forthwith forbidden by the gager to sell, carry out, or deliver to any of his customers, any beer, ale, or other the liquors aforesaid; and if he shall after such warning given, sell, carry, or deliver out the same, or any part thereof, not having paid the duty of excise, he shall, besides the forfeiture of double value, forfeit also the sum of 10 *l.* 12 *C.* 2. *c.* 24. *s.* 33.

And by the 7 & 8 *W.* *c.* 30. If any common brewer, innkeeper, or victualler, shall on request or demand made by the gager in the day time, or in the night in presence of a constable, refuse to permit him to come into his house, brewhouse, or other place used by him; or being entred, shall refuse him to stay in the brewhouse, whilst his guile is brewing, and quietly gage and take an account of the several worts as they are brewed off, and let into his backs and tuns, and to see their strong and small drink cleansed and carried out without mixture, and to take an account of the goods in the mesh tun, or the quantity of malt from which such worts are made; he shall forfeit 20 *l.* and the prosecutor shall not be obliged to prove that the party carried out any part of such guile before he paid the duties. *s.* 22.

And by the said act, if any maker of *vinegar*, *cyder*, *metheglin*, *mead*, or *sweets* for sale, shall conceal any vinegar, or liquor prepared for vinegar, or any cyder, metheglin, mead, or sweets from view of the gager; he shall for every barrel of vinegar or liquor prepared for vinegar, or sweets, forfeit 40 *s.* for every hogshead of cyder 40 *s.* and for every gallon of metheglin or mead 5 *s.* *s.* 16.

And if any maker or retailer of vinegar, or other the liquors last mentioned, shall on request or demand made by the gager in the day time, or if by night in the presence of a constable, refuse to permit him to enter his house, storehouse, or other place used by him, and to take account of the said liquors; he shall forfeit 15 *l.* *s.* 17.

And by the 4 *G.* *c.* 3. Every dealer in *cyder* or *perry*, and person receiving it into his custody, shall be chargeable with the du-

ties, unless they shall make it appear, either that it was made of fruit of their own growth, and not of bought fruit, or that the duty is paid; and if such person on request made by any officer of excise in the day time, shall not permit him to enter his cellars, storehouses, or other places, and by gaging or otherwise to take account of all cyder and perry there found, he shall forfeit 20*l.* *s.* 11.

Indifferent gagers may be sworn.

16. As often as there shall be occasion, two able artists shall be appointed, one of them by the commissioners or subcommissioners, and the other by the brewers of any city or place; who shall be sworn before a justice, to take and compute the just contents and gage of all coppers, fats, tuns, backs, and coolers, and all other brewing vessels of that nature, and to deliver under their hands one copy of the contents to the commissioners and subcommissioners, and another to each respective brewer. 15 *C.* 2. *c.* 11. *s.* 7.

Brewer to declare how much he intends to make.

17. Every common brewer who shall make any guile of beer or ale, shall declare to the gager, how much strong beer or ale he intends to make of such guile, and how much small, before any part of the guile is cleansed or removed out of his tuns; and if such brewer or his servants shall refuse to make such declaration, the gager shall return the whole as strong, and the brewer shall also forfeit for every barrel in such guile 20*s.* And if such brewer or his servants, after such declaration shall make any increase of the strong beer or ale, or if the gager shall find any beer, ale, or worts of the same guile laid off, over and above the quantity so declared; he shall forfeit for every barrel so increased, laid off, or found over and above such quantity 5*l.* and the servant assisting therein 20*s.* and in default of payment be imprisoned three months: And if on an information against the brewer for the said penalties, it appear by his evidence, that the strong beer or ale so declared, was increased by adding to or mixing with it any beer or ale that was left in the brewhouse of a former guile, he shall nevertheless incur the penalties, except it be also proved upon oath that the strong beer or ale so added to such guile, was added in the sight and view of the gager. 8 & 9 *W.* *c.* 19. *s.* 2.

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18. And whereas many brewers, having strong beer or ale remaining in the brewhouse from the time it was brewed, until the next guile or brewing, the quality of which they frequently alter by mixing with the same new small beer, or old returned drink, and then add the beer and ale so altered to the next guile; if it shall appear to the gager that the quality of such strong beer or ale so remaining in the brewhouse of a former guile, and added to a guile of new drink, hath been so altered since it was brewed, he shall return all such beer and ale so altered and added to a guile of new drink, as if the same were then originally brewed, and had never been charged before. 8 & 9 *W.* *c.* 19. *s.* 3.

ng drink the whole wed off.

19. If any common brewer, innkeeper, or victualler, shall cleanse, or remove out of his brewhouse, any part of his guile or brewing of beer, ale, or worts, before the whole of such guile is brewed off, and be in his tuns, backs, or coolers, and until the gager shall or might have taken an account of the same, without

first giving notice to the supervisor or gager, at what time, and how much of such guile or brewing he intends to cleanse or remove, and where he intends to dispose of the same; he shall for every barrel forfeit 40*s*. 7 & 8 *W*. *c*. 30. *s*. 21.

20. Where it shall appear to the gager, that any worts are missing, or not fairly let down into the tun, and the gager cannot find the same, he may charge for so much beer or ale, as such worts so missing would reasonably make. 1 *W*. *st*. 1. *c*. 24. *s*. 6. Gager may charge for worts missing.

21. Gagers may take their gages, and make their returns and charges, upon warm worts in the backs, coolers, or other vessels; and in such case make allowance of one tenth part thereof for wash and waste; which worts shall not be afterwards charged, when made into beer or ale. 1 *W*. *st*. 1. *c*. 24. *s*. 7. Gage may be taken in warm worts.

22. If any common brewer, innkeeper, victualler, or other retailer of beer or ale, shall after an account hath been taken by the gager, convert any small beer or small worts into strong beer or ale, by mingling the same, and shall sell, deliver out, or retail the same, without giving notice to the same gager, of the quantity so mingled and converted; or if any such brewer or retailer shall conceal or convey any beer, ale, or worts not gaged, from the sight of the gager, whereby the king may be defrauded of the duty; he shall forfeit 20*s*. a barrel. 15 *C*. 2. *c*. 11. *s*. 12. 1 *W*. *sess*. 1. *c*. 24. *s*. 11. Mixing small beer with strong.

23. No common brewer shall sell, deliver, or carry out any beer or ale to any of his customers, either in whole cask or by the gallon, in any city or market town, before notice given to an officer of excise, but between three in the morning and nine in the evening from *Mar*. 25. to *Sep*. 29. and between five in the morning and seven in the evening between *Sep*. 29. and *Mar*. 25. on pain of 20*s*. a barrel. 15 *C*. 2. *c*. 11. *s*. 11. Time of delivering out.

And by the 10 & 11 *W*. *c*. 21. No *vinegar maker* shall receive into his custody any liquors for making of vinegar, nor deliver out any vinegar in casks or by the gallon, without notice first given to the officer, unless from *Sep*. 29. to *Mar*. 25. yearly, between seven in the morning and five in the evening; and from *Mar*. 25. to *Sep*. 29. between five in the morning and seven in the evening; on pain of 50*l*. *s*. 12.

And on receiving such liquors into his custody, he shall shew the same to the gager before he mix them with any other liquors, rape, or other materials; on pain of 20*l*. *id*. *s*. 13.

24. If any common brewer, or innkeeper, shall on carrying out his drink, or after it is carried out, mix any small beer or small worts, with any strong beer or ale on his dray, or in any victualler's cellar, or other place; he shall forfeit 5*l*. and the gager may taste the drink upon the dray, and also on request may enter the cellar or other room in the possession of any innkeeper or victualler that shall receive any drink from a common brewer, and taste the drink in the same; and if the innkeeper or victualler shall refuse him to enter into his cellar or other rooms, or to taste the drink in the same, he shall forfeit 5*l*. 7 & 8 *W*. *c*. 30. *s*. 23. Mixing after delivered out.

25. No retailer of beer or ale, shall after the receipt thereof from the common brewer, mix any beer, ale, or worts, of extra- Mixing by the retailer.

ordinary ſtrenth, with any ſmall beer, ale, or worts, in any veſſel containing three gallons or more; on pain to forfeit for every barrel ſo mixt, double the duty of exciſe for ſtrong beer or ale, and ſo proportionably for any greater quantity. 22 & 23 *C.* 2. *c.* 5. *ſ.* 11.

Meaſure and allowance for leakage, within the bills of mortality.

26. And for avoiding incertainties in the returns of the gagers, the barrel of beer (within the bills of mortality) ſhall be 36 gallons of four quarts to the gallon, according to the ſtandard in the exchequer; and the barrel of ale 32 gallons: And all other the liquors aforeſaid, ſhall be reckoned according to the wine gallon. 12 *C.* 2. *c.* 24. *ſ.* 34. 1 *W. ſt.* 1. *c.* 24. *ſ.* 5.

And the common brewer, not ſelling the ſame by retail, for waſte by fillings and leakage, ſhall be allowed on every 23 barrels of beer, whether ſtrong or ſmall, three barrels; and upon every 22 barrels of ale, two barrels. 12 *C.* 2. *c.* 24. *ſ.* 36.

But if any common brewer ſhall make a falſe entry, and be convicted thereof; he ſhall, over and above other penalties, forfeit the ſaid allowance for ſix months then next enſuing. 12 *C.* 2. *c.* 24. *ſ.* 37.

In other places.

27. In all other places, 34 gallons ſhall be reckoned for a barrel of beer or ale; and the allowance for waſte ſhall be two $\frac{1}{2}$ on every 23 barrels. 1 *W. ſt.* 1. *c.* 24. *ſ.* 5.

Notes of the gage and charge to be left.

28. Notes of every *gage*, ſigned by the gagers, containing the inches and tenths of the backs, and wants of the tuns, and quality of the liquors, ſhall be left by them with the common brewers of ale or beer, or ſome ſervant (if demanded) at the time of taking the gages; on pain of 40 *s.* 7 & 8 *W. c.* 30. *ſ.* 46.

And by the ſame act, the gager ſhall, within three days after the end of every week, deliver to or leave with the brewer or retailer, or their ſervants, a true copy under his hand, of each reſpective *charge* by him made, containing the quantity and quality of the liquors by him charged in ſuch week; and if he ſhall neglect or refuſe (after demand in writing, 12 *G. c.* 28. *ſ.* 30.) to leave ſuch copy, or ſhall charge ſuch perſon more than ſuch copy contains, he ſhall forfeit 10 *l.* *ſ.* 25.

Relief in caſe of over charge.

29. The commiſſioners of exciſe or appeals, or juſtices of the peace, on complaint of any over charge returned upon them by the gager, ſhall hear and determine the complaint, and examine witneſſes on oath, and thereupon, or by other due proof, may diſcharge ſuch complainant of ſo much of his charge as ſhall be made out before them. 1 *W. ſeſſ.* 1. *c.* 24. *ſ.* 13.

Entry and payment of duties.

30. All common brewers of beer and ale, ſhall once in every week; and all inkeepers, alehouſekeepers, victuallers and other retailers of beer, ale, cyder, perry, or metheglin, brewing, making, or retailing the ſame, ſhall once in every month, make entries at the exciſe office, of all ſuch liquors brewed, made, or retailed in that week and month reſpectively. 12 *C.* 2. *c.* 24. *ſ.* 29.

And all ſuch common brewers who do not once a week make due entries, ſhall forfeit 10 *l.* And every ſuch innkeeper who doth not make true entries once a month, ſhall forfeit 5 *l.* And every

every alehouſekeeper, victualler, or other retailer, who doth not once a month make due entries, ſhall forfeit 20*s*. *id. ſ.* 30.

And every common brewer who ſhall not pay within a week after he made his entry, or ought to have made his entry, ſhall pay double value of the duty; and every innkeeper, alehouſekeeper, victualler, or other retailer who ſhall not pay within a month after he made his entry, or ought to have made his entry, ſhall pay double value of the duty. *id. ſ.* 31.

Provided that no ſuch perſon ſhall be compelled to travel for making the ſaid entries or payment of the ſaid duties, or other cauſe whatſoever touching the ſame, if he live in a market town, out of the ſaid town; if he live out of a market town, then to no other place than to the next market town to his habitation in the ſame county, on the market day. *id. ſ.* 32.

But no common brewer ſhall be proſecuted for any forfeiture for any miſentry or ſhort entry, if he ſhall in one week after the delivery of the copy of the return made by the gager, rectify his entry according to the ſaid return, or otherwiſe diſcharge himſelf. 15 *C.* 2. *c.* 11. *ſ.* 6.

But no brewer ſhall have any benefit of this proviſo, on any information to be brought againſt him for non-entry, falſe entry, or non payment; if it ſhall appear by the evidence, that he did not *bona fide* ſhew to the gager all the beer, ale, and worts of each reſpective guile, for ſuch time for which ſuch copy of the return was made; or if any apparent fraud was acted, to defraud the king of his duty, for any part of the drink brewed in the time for which ſuch copy of the return is made or given by the gager. 1 *W. ſeſſ.* 1. *c.* 24. *ſ.* 10.

Exception of ſelling in fairs.

31. But if any perſon ſhall brew, and ſell by retail, any ſmall quantities of beer or ale in any fair, who is not otherwiſe a common brewer or retailer thereof, and ſhall before ſuch ſelling and retailing, pay the exciſe for the ſame; he ſhall be freed from all penalties relating to ſuch entries, and the like. 12 *C.* 2. *c.* 24. *ſ.* 39.

Permit for removal after duty paid.

32. If any *ſweets*, having paid the duty, ſhall be intended to be removed, the exciſe officer ſhall on requeſt give a certificate under his hand, expreſſing the quantity and quality, and from whom and to whom they are to be ſent; and if any maker ſhall otherwiſe remove them, or vintner receive them, he ſhall forfeit 10*s*. a gallon, and alſo the liquor and caſks. 6 *G. c.* 21. *ſ.* 22.

Compounding.

33. The commiſſioners and ſubcommiſſioners may compound with innkeepers and others for the duties. 12 *C.* 2. *c.* 24. *ſ.* 40.

But no perſon who hath compounded ſhall, during the term of ſuch compoſition, ſuffer any beer or ale to be brewed within his brewhouſe, for any other common brewer, without firſt giving notice to the commiſſioners or ſubcommiſſioners, and forthwith paying down the exciſe thereof; upon pain that as well the brewer who ſhall brew the ſame, as the brewer for whom it ſhall be brewed, ſhall forfeit 5*l*. for every barrel. 15 *C.* 2. *c.* 11. *ſ.* 14.

Utensils liable to the penalties and duties.

34. All the brewing vessels and utensils for brewing, into whose hands soever they shall come, and by what conveyance or title soever they be claimed, shall be subject to all the debts and duties of excise in arrear for any beer or ale made in the said brewhouse; and shall also be subject to all penalties and forfeitures against the laws of excise; and it shall be lawful to levy debts and penalties, and use such proceedings against the utensils therein contained, as it may be lawful to do, in case the debtor or offender using the said utensils had been the real owner thereof. 15 *C.* 2. *c.* 11. *s.* 13.

Limitation of actions.

35. No information shall be brought against any common brewer, or alehousekeeper, vinegar maker, or cyder maker, for any misentry or offence, but within three months after the offence committed; and notice thereof shall be given to him in writing, or left at his dwelling house, within a week after laying and entring the information. 1 *W. sess.* 1. *c.* 24. *s.* 16. 12 & 13 *W.* *c.* 11. *s.* 17.

Delivering materials to distillers.

36. If any common brewer, or maker of cyder, making beer, ale, or cyder for sale, shall deliver to any distiller or vinegar maker, any wash, tilts, ale beer, vinegar beer, or cyder, without first giving notice to the gager, what quantity he intends to deliver, and when, and to whom; he shall forfeit for every barrel 20*s.* 8 & 9 *W.* *c.* 19. *s.* 9.

Exportation.

37. Ale, beer, cyder, or mum, may be exported; paying custom 1*s.* a ton. 1 *W.* *st.* 1. *c.* 22.

And on exportation thereof the excise shall be repaid. 22 & 23 *C.* 2. *c.* 5. *s.* 15. 7 *G.* *st.* 1. *c.* 20. *s.* 31.

II. Candles.

Duty on candles imported.

1. For every pound of tallow candles imported, shall be paid in the whole, by the several acts, 2 *d.* $\frac{1}{4}$. 2 *W. sess.* 2. *c.* 4. *s.* 37. 8 *An.* *c.* 9. *s.* 1. 9 *An.* *c.* 6. *s.* 11.

For every pound of wax candles imported, 8 *d.* 8 *An.* *c.* 9. *s.* 1. 9 *An.* *c.* 6. *s.* 11.

Duty on candles made in Great Britain.

2. For all candles made of wax, or usually called or sold for wax candles (notwithstanding the mixture of any other ingredients) made in *Great Britain*, shall be paid 8 *d.* a pound:

All other candles 1 *d.* a pound. 8 *An.* *c.* 9. *s.* 1. 9 *An.* *c.* 6. *s.* 11.

Rush lights excepted.

3. But the said duties shall not be charged on such small rush lights, as shall be made by any persons to be used in their own houses only, so as none of them be sold or delivered out or made for sale, and so as they be once only dipped in, or once drawn thro' grease or kitchen stuff, and not thro' any tallow melted or refined. 8 *An.* *c.* 9. *s.* 31.

Oil not to be used instead of candles.

4. During the continuance of the duties upon candles, no person shall use in the inside of his house, any lamp, wherein any oil or fat (other than oil made of fish within *Great Britain*) shall be burned for giving light; on pain of 40*s.* 8 *An.* *c.* 9. *s.* 18.

5. No

5. No maker of candles shall erect, set up, alter, or use any melting house, workhouse, warehouse, storehouse, shop, room, or other place for the making or keeping of candles, or for the melting or keeping any wax, tallow, or other materials proper to be made into candles; or use any copper, furnace, moulds, or other vessel for melting of wax, tallow, or other materials to be made into candles; without notice thereof being first given in writing at the next office of excise: on pain of 50 *l.* 8 *An. c.* 9. *s.* 6. Places of making candles to be entred.

And all candles, wax, tallow, and other materials for making candles, which shall be found in any private melting house, workhouse, or other place, and all private coppers, furnaces, and other vessels, for which no entry shall be made, or notice given, shall be forfeited, or the value thereof. 8 *An. c.* 9. *s.* 17.

And by the 11 *G. c.* 30. If any maker of candles (except compounders) shall use any melting house, shop, or other place, for making or keeping of candles, or for melting or keeping of wax, tallow, or other materials, or use any copper or other vessel for melting the same, or any moulds or other utensil for making of candles, without having made entry thereof in writing at the next excise office; he shall forfeit 100 *l.* *s.* 23.

And the officer, between five in the morning and eleven in the evening, with or without a constable, and between eleven in the evening and five in the morning, with a constable, shall be permitted on request to enter and search; and all chests and other like things locked up, shall on his request be opened; on pain that every person obstructing or molesting him, shall forfeit 100 *l.* 11 *G. c.* 30. *s.* 24.

And if the officer on his searching any unentred house or place, shall find candles either made or making, or tallow or other materials melting or melted, or cottons or rushes spread, or any copper, mould, or other utensil warm with tallow or other materials; this shall be sufficient evidence to convict the offender in the penalty of 100 *l.* for having used the same not being entred. 11 *G. c.* 30. *s.* 25.

And leaving a summons at the place where the discovery was made, directed to the person prosecuted by his right or assumed name, shall be deemed as effectual as if personally delivered to him, and by his proper name. *id. s.* 26.

6. The officer shall at all times, by day or by night, and if in the night, then in presence of a constable, be permitted on his request, to enter the house, melting house, warehouse, or other place, belonging to, or used by any person who shall be a maker of candles; and by weighing or tale of the candles, or otherwise, to take an account of the quantity; and shall thereof make a return in writing to the commissioners, or to whom they shall appoint; leaving a true copy of such report, under his hand, with or for the maker: and if he shall refuse or neglect to leave such copy (on demand thereof made in writing, 12 *G. c.* 28. *s.* 30.) he shall forfeit 40 *s.* 8 *An. c.* 9. *s.* 10. Officer to enter and take account.

7. And

The maker to keep scales and weights.

7. And the maker shall keep just scales and weights, where he makes his candles; and shall permit and assist the officer to make use thereof, on pain of 10 *l.* 8 *An. c.* 9. *s.* 11.

Notice and time of making.

8. No maker of candles for sale, shall begin to make any course or making of candles, without notice thereof first given to the officer, unless from *Sep.* 29 to *Mar.* 25. yearly, between seven in the morning and five in the evening; and from *Mar.* 25. to *Sep.* 29. between five in the morning and seven in the evening; on pain of 10 *l.* 10 *An. c.* 26. *s.* 107.

Maker to declare the number and sizes.

9. Every maker of candles for sale, shall before he begins to make or dip any making or course of candles, declare to the officer the number of sticks he designs to make, and the sizes of the candles whereof each stick is to consist; and if such making or course is intended to be of moulded candles, then he shall declare to the officer, before he begins to fill the moulds, how many moulds he intends to fill at such making, and how often he intends at such making to draw the moulds: and if he shall neglect or refuse to make such declaration, or shall after such declaration make any increase of his number of sticks, or of the sizes of his candles in such making or course; or, in the case of making mould candles, shall fill a greater number of moulds, or draw such moulds oftner than shall be declared; or if he shall, after the weighing of any making of candles by the officer, increase the weight of such candles, by redipping, or otherwise; he shall forfeit 10 *l.* 10 *An. c.* 26. *s.* 106.

And by the 11 *G. c.* 30. If any maker of candles for sale, shall begin to make any course of candles, not being mould candles, or make preparation for the same, without notice in writing to the officer of such his intention, and of the time of the day or night when he intends to begin, and of the number of sticks of which such making is intended to consist, and of the sizes and number on each stick; he shall in default hereof, or if he have at such making more sticks, or more candles, or larger than mentioned in the notice, forfeit 50 *l.* and if after such notice, he shall not begin at the time, or within three hours of it, such notice shall be void. *s.* 27.

And lighting a fire under a vessel for melting the materials, or finding in such vessel, or in any mould, the materials melted or melting, or cottons or rushes spread or spreading, shall be deemed to be such a *beginning to work*, as shall make him liable to the said forfeiture. *s.* 28.

The officer shall charge for materials missing.

10. The officer shall be permitted to take an account of the quantities of wax, tallow, and other materials; and if he shall miss any that he had taken account of at the last time he was at the maker's, and shall not on demand receive satisfaction what is become thereof, the officer may charge such quantity of candles, as the materials so missing in his judgment would have made, not exceeding 108 *lb.* of candles for every 112 *lb.* of materials missing, and so proportionably. 8 *An. c.* 9. *s.* 12.

And if any such maker shall obstruct the officer, he shall forfeit 20 *l.* *s.* 13.

11. Candles

11. Candles cracked or ſpoiled in making, may be defaced by the officer, who ſhall make allowance for the duty. 8 *An. c.* 9. *ſ.* 29. Candles ſpoiled in making.

12. No maker of candles ſhall (on pain of 20 *l.*) remove any candles, before the officer hath taken account of the ſame, without giving to the officer, within the bills, 24 hours notice; and elſewhere, two days notice, of his intention to remove the ſame. 8 *An. c.* 9. *ſ.* 14. Removing candles before ſurveyed.

13. The maker ſhall keep his candles which have not been ſurveyed, ſeparate from all other candles which have been ſurveyed, for 24 hours after making, within the bills, and for two days elſewhere; unleſs they ſhall have been ſooner ſurveyed by the officer: on pain of 5 *l.* 8 *An. c.* 9. *ſ.* 15. Candles unſurveyed to be kept ſeparate.

14. If any officer of the exciſe ſhall have cauſe to ſuſpect, that any candles are fraudulently concealed, if it is within the bills, then on oath made by ſuch officer before two commiſſioners, or if it be elſwhere, then upon oath before any juſtice of the peace, ſetting forth the ground of his ſuſpicion, they or he may impower ſuch officer by day or night by ſpecial warrant (but if in the night, in preſence of a conſtable) to enter into the places ſuſpected, and ſeize and carry away as forfeited all ſuch candles, together with the package; and if any perſon ſhall obſtruct ſuch officer, he ſhall forfeit 100 *l.* 23 *G.* 2. *c.* 21. *ſ.* 34. Search for candles concealed.

15. If any maker of candles for ſale, ſhall mingle candles which have not been weighed by the officer, with thoſe which have; or ſhall fraudulently remove any before weighing; or conceal any candles or materials: he ſhall forfeit 100 *l.* 11 *G.* *c.* 30. *ſ.* 30. Further penalty of removing, mingling, or concealing.

16. Every perſon who ſhall make any candles within the bills of mortality ſhall monthly, and elſewhere once in every ſix weeks, make a true entry in writing, at the next exciſe office, of all candles by him made within ſuch time; which entry ſhall contain the weight, number, and ſize of the candles, and what quantity thereof was made at each courſe in the ſeveral weeks; on pain for every neglect of entry to forfeit 20 *l.* Which entry ſhall be upon the oath of the maker or his chief workman, according to the beſt of their knowledge and belief; the ſaid entries and oaths, within the bills, to be made with and adminiſtred by ſuch officer as the commiſſioners ſhall appoint at the general exciſe office, and elſwhere by the collectors or ſupervisors. 8 *An. c.* 9. *ſ.* 7. Entry of candles made.

But he ſhall not be obliged to go further than the next market town, for making ſuch entry. *ſ.* 8.

17. And the maker ſhall in four weeks within the bills, and elſewhere in ſix weeks, after ſuch entry, pay and clear off the duties; on pain of double duty; and no maker after default in payment ſhall ſell, deliver, or carry out any candles, till he hath paid off the duty, on pain of double value. 8 *An. c.* 9. *ſ.* 9. Duty to be cleared off.

18. And if there ſhall be found in the poſſeſſion of any maker of candles for ſale, any candles not mentioned in the entry made by him, and of which the officer hath not had an account, and the duties have not been paid; he ſhall be chargeable with the duties, and if he do not pay the ſame, he ſhall be liable to double duty, Candles not entred, nor duty paid.

duty, unless he shall prove that the duty hath been paid, or that he bought the same of some other chandler who had paid the duty, and that he gave six hours notice in writing to the officer, or at the next excise office, of his intention to buy the same, and of whom. 11 *G. c.* 30. *s* 29.

Candles where to be sold.

19. No person shall expose to sale any candles, unless in his publick shop or warehouse, publick fair or market; on pain of 5 *l.* 8 *An. c.* 9. *s.* 18.

Compounding.

20. The commissioners or such person as they shall appoint, and in default thereof the collector or supervisor, may compound with persons that make candles for their own private houses, for the duties, at 1 *s.* by the year for every head in the family, to be paid quarterly; and such person shall not be liable to the duties. 8 *An. c.* 9. *s.* 20.

But if any person after composition shall sell or deliver out any candles, or shall permit any other person to make candles in his house or outhouse; or shall have more persons of his family than he shall compound for, without giving notice of them in writing at the next excise office, at or before the next quarter day, and paying the like composition for them, he shall forfeit 5 *l.* and lose the benefit of his composition, and be liable to the duties and survey of the officers; and for every pound of candles so privately sold or delivered out or made, shall forfeit 5 *s.* *s.* 21.

And every such compounder, who shall make default in continuing the same, shall in ten days make entry upon oath of all such candles as he shall be possessed of, at the excise office, on pain of forfeiting 20 *l.* and the candles of which no such entry shall be made; and in six days after such entry, shall pay the duties, on pain of double value of the candles, and his houses and other places shall be liable to the search of the officers. 9 *An. c.* 6. *s.* 14.

Candles carried coastwise.

21. Cocquets granted for shipping candles, to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if they shall be shipped without such cocquet, they shall be forfeited, and seized, together with the package. 23 *G.* 2. *c.* 21. *s.* 29.

Exportation and importation.

22. No candles shall be imported, otherwise than in some package, containing at least 224 *lb.* of neat candles, and stowed openly in the hold; on pain of being seized and forfeited, together with the package; and the master of the vessel shall forfeit 50 *l.* 23 *G.* 2. *c.* 21. *s.* 27.

But on information brought against such master, he may detain the wages of the mariners, till it be determined; and if it shall appear, that the candles were put on board by any mariner without the master's knowledge, the master may apply such mariner's wages, in payment of the forfeiture. 26 *G.* 2. *c.* 32. *s.* 8.

And the officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all candles forfeited, together with the package; and they may likewise seize such as before entry and payment of duties, shall be found unshipping or unshipped, 23 *G.* 2. *c.* 21. *s.* 28.

Candles

Candles for which the duty hath been paid may be exported, and the duty drawn back. 8 *An. c.* 9. *s.* 24, 25, 26.

But no drawback shall be allowed, on the exportation of any foreign candles imported. 23 *G.* 2. *c.* 21. *s.* 36.

And the officers of excise or customs may seize any candles, with the package, that shall be found in any vessel, cart, or other carriage, where they shall have good reason to believe, that the same were made in some private workhouse, or clandestinely imported without payment of duty; or that the same have been exported and relanded after repayment of the duty: and if the party in whose possession the same shall be found, shall not at the hearing of the information, make it appear that the duty hath been paid or secured, he shall forfeit 5 *l.* for every 100 *lb.* weight, and also the candles and package shall be forfeited. *s.* 30.

And if any foreign candles shall be unshipped, with intention to be laid on land, before entry and payment of the duties, or shall be landed again after shipping for exportation upon debenture; the same, together with the package, vessels, boats, horses, and other carriages, used in landing or conveying the same, shall be forfeited, and may be seized by any officers of the customs or excise; and the persons from whom the same shall be seized shall forfeit 5 *l.* for every hundred weight. *s.* 31.

And if any person shall knowingly harbour or conceal any candles unlawfully imported, or relanded after shipping for exportation upon debenture; he shall, whether he claims any property therein or not, forfeit 50 *l.* for every hundred weight, together with the candles and package. *s.* 32.

And where any such candles shall be seized as forfeited, and no person shall claim the same in 20 days, if it is within the limits of the chief office of excise in *London*, the officer who made the seizure may cause notice signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it is out of the said limits, then publick notice shall be given by proclamation at the next market town on the market day next after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof. And the judgment thereon, shall not be liable to any appeal, or to be removed by *certiorari*. *s.* 33.

Power of the justices.

23. All the said fines, forfeitures, and penalties, may be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; and distributed half to the king, and half to him that shall inform or sue. 8 *An. c.* 9. *s.* 28. 11 *G. c.* 30. *s.* 39. 24 *G.* 2. *c.* 40. *s.* 33.

Appeal.

24. And if the party is not satisfied with any judgment of the justices on the act of 23 *G.* 2. *c.* 21. before mentioned, he may appeal to the next quarter sessions, except in the case before mentioned where no person shall claim the goods seized. *s.* 37.

Mitigation.

25. And on informations on the said act of 23 *G.* 2. the mitigation shall not reduce the penalty to less than a fourth part, over above the costs and charges to be allowed. *s.* 38.

26. And

Proof to lie on the owner.

26. And where candles shall be seized for nonpayment of duties, or non-entry, and it shall be disputed whether such payment or entry was made or not, the proof shall lie on the claimer, and not on the officer. 23 *G.* 2. *c.* 21. *s.* 35.

Utensils liable to the duties and penalties.

27. All candles, materials, and utensils for making of candles, in custody of any maker of candles, or person in trust for him, shall be chargeable with all duties in arrear, and subject to all penalties and forfeitures, in the same manner as if the debtor or offender were the lawful owner. 8 *An.* *c.* 9. *s.* 19.

III. Coaches.

Duty on coaches.

1. For every coach, berlin, landau, chariot, calash, with four wheels, chaise marine, chaise with four wheels, and caravan, kept by any person for his own use, or to be let out to hire; shall be paid 4 *l.* yearly: and for every calash, chaise, and chair with two wheels, kept by any person for his own use, or to be let out to hire; shall be paid 40 *s.* yearly. 20 *G.* 2. *c.* 10. *s.* 1.

But this shall not extend to *licensed hackney coaches*, within *London* and *Westminster* and the suburbs thereof, not employed in carrying persons more than ten miles from the said cities. *s.* 11.

Nor to *coaches kept for sale:* But no such carriage shall, whilst in possession of the coachmaker or other person, be employed for his own use, or for the use of any other person (other than such whose carriage shall be then and there mending), or be let out to hire; on pain of 20 *l.* *s.* 12.

Nor to any *publick stage coach*, which is constantly employed in carrying passengers for hire, on certain fixed days in every week, and not let to hire by way of by jobb, for a day, or any longer time. *s.* 7.

Nor to any *post chaise* kept for hire by the postmaster general, or any deputy postmaster: But such post chaises shall in 30 days after letting out the same, be entred by the owners at the next office of excise; and shall (besides the king's arms) have such mark of distinction fixed thereon, as shall be appointed by the commissioners; on pain of 20 *l.* *s.* 8, 9.

And the commissioners shall cause a mark of distinction to be fixed on every such carriage, that shall be let out to hire; and if any person shall let out to hire any such carriage without such figure fixed thereon, or shall take off the same when fixed; he shall forfeit 20 *l.* *s.* 10.

Moreover, no person shall be obliged to pay the said yearly sum of 4 *l.* for more than five such carriages kept for his own use only; but if he keep the same for supplying any waiting jobb, by the day, week, month, quarter, or any other time, or to be let out to hire, he shall pay 4 *l.* for each, tho' exceeding the number of five; and every person who shall keep such carriage with two wheels, to be let out for hire, shall pay 40 *s.* yearly for each, tho' exceeding the number of five. *s.* 2.

Entry and payment of the duties.

2. Every person who shall keep such coach or other carriage, shall in 20 days after he shall begin to keep the same, and within 20 days yearly after the expiration of 12 kalendar months after the

the time of giving such first notice,—give notice in writing, at the chief office of excise in *London* (if within the bills); and elsewhere, shall give notice at the next office of excise,—of his keeping the same, and the number, and whether with four or two wheels, and where he resides; and at the same time pay down the duties: on pain of 20 *l.* *s.* 4, 5.

But if the duties are paid, and entry made, before information brought, the party shall not be prosecuted, tho' it be not strictly within the time limited. *s.* 15.

And the said entry and payment shall be registred by the proper officer, and a receipt given for the duty, of which receipt the officer shall keep an indented duplicate. *s.* 6.

3. Where a person shall die before the end of the year, the person claiming title to the coach, may use it, as the deceased might have done. *s.* 16. Person dying before the end of the year.

4. All the said rates and duties, and all forfeitures and offences, shall be determined by the commissioners of excise (or of appeals, in case of appeal), within the limits of the chief office in *London*; and elsewhere, by two justices near; who shall, on complaint upon oath, summon the party, and on his appearance or contempt, may examine the fact, and on proof thereof either by confession, or oath of one witness, give judgment, and issue warrants for levying penalties by distress and sale (if not redeemed in 14 days); which shall be employed (all necessary charges first deducted) half to the use of the king, and half to the informer: and for want of sufficient distress, they may imprison the party till satisfaction is made. *s.* 13, 14. Power of the justices.

[But as these duties chiefly affect the nobility and persons of distinction, it had been better if the act had been more explicit with respect to the punishment; otherwise it may not be so safe for justices of the peace, upon such vague and general words, to imprison a peer of the realm, or distrain the goods of a member of parliament during their session. But if the justices will proceed, or shall be compelled by *mandamus*, or otherwise, so to do; they must remember withal, that by the 27 *G.* 2. *c.* 20. they may not order the distress to be detained more than eight days, nor less than four.]

5. Persons aggrieved by the determination of the justices, may appeal to the next quarter sessions. *s.* 13. Appeal.

IV. Coffee, tea, and chocolate.

1. For all coffee imported, shall be paid at the custom house, in the whole, the sum of 3 *d.* a pound. 10 *G.* *c.* 10. *s.* 48, 49. Duty on coffee.

And an inland duty, to be paid by the maker or seller, of 2 *s.* a pound. *id.* *s.* 4, 6.

Except coffee of the growth of the *British* plantations in *America*; which shall pay only 1 *s.* 6 *d.* a pound. 5 *G.* 2. *c.* 24. *s.* 1.

2. No tea shall be imported, but from the place of its growth; on pain of forfeiture. 11 *G.* *c.* 30. *s.* 8, Duty on tea.

And

And by the 18 *G.* 2. *c.* 26. Over and above the customs on importation, there shall be paid on all tea, an inland duty of 1 *s.* a pound, and 25 *l.* for every 100 *l.* of the gross price at which it shall be sold at the *East India* company's sales; which shall be paid in ready money by the proprietor to the collector, before it be taken out of the warehouse. *s.* 2.

In order to which, the commissioners may appoint officers to attend at the *East India* company's sales, and take an account of the names of the buyers and prices, and make report thereof to the commissioners; from whence the 25 *l. per cent.* shall be ascertained; and to prevent mistakes, the said officers may inspect the company's books. 18 *G.* 2. *c.* 26. *s.* 6.

And every person declared the best bidder at such sale, shall within three days after, deposit with the company or their clerk 40 *s.* for every tub and chest of tea, on pain of six times the value, and such sale shall be void, and the same shall in 14 days after be put up again. *s.* 7.

Duty on cocoa nuts and chocolate.

4. No chocolate ready made, or cocoa paste, shall be imported, on pain of forfeiting the same, and double value; and also the bags, casks, and other package. 10 *G.* *c.* 10. *s.* 2.

For cocoa nuts imported, shall be paid at the custom house in the whole, 10 *s.* a hundred weight. 10 *G.* *c.* 10. *s.* 47, 49.

And if any person shall import any cocoa nut shells or husks, without the nuts, the officers of the customs, excise, or inland duties, may seize them, with the bags, boxes, and package; and after condemation they shall be destroyed or otherwise disposed of, as the respective commissioners, or three of them shall appoint; and they may reward such officer in any sum not exceeding 20 *s.* a hundred weight. 4 *G.* 2. *c.* 14. *s.* 12.

For all chocolate made or sold in *Great Britain*, shall be paid by the maker or seller, 1 *s.* 6 *d.* a pound. 10 *G.* *c.* 10. *s.* 6.

Officers of excise may go on board and search.

4. The excise officers may go on board any ships, and search as the officers of the customs may do, for coffee, tea, cocoa nuts, chocolate, and cocoa paste, and seize all such as shall be forfeited, or shall be unshipt without entry and payment of duties, with the boxes, bags, and other package. 11 *G.* *c.* 30. *s.* 1.

Ships hovering near the coast.

5. And where any vessel coming from foreign parts, and having six pounds or more of tea on board, shall be found at anchor, or hovering within two leagues of the shore, or be within the limits of any port, and not proceeding on her voyage, wind and weather permitting; all such tea, with the chests and other package, or the value thereof, shall be forfeited (whether bulk shall have been broken or not), and the same may be seized and prosecuted, or the value thereof sued for by the officers. 9 *G.* 2. *c.* 35. *s.* 22.

The said goods to be warehoused.

6. Coffee, tea, and cocoa nuts imported, on entry at the custom house, and paying or securing the duties, shall be put into warehouse, to be provided at the charge of the importer, and to be approved of by the commissioners of the customs. 10 *G.* *c.* 10. *s.* 26.

Penalty of not entring and warehousing.

7. And if any person shall import any coffee, tea, or cocoa nuts, without entry, and bringing the same into the warehouse, the same shall be deemed clandestinely run, and may be seized by any

any officer of the customs or inland duties; and the offender shall forfeit the same with the package, and the horses, carts, and carriages. 10 *G. c.* 10. *s.* 27.

8. And the owner of the said goods, and the officer for the inland duties (who shall be appointed by the commissioners of the said duties) shall have each a lock and key; and the owner may in presence of the said officer, and of the warehouse keeper (to be appointed by the commissioners of the customs) view, garble, and sort the said goods, to make them merchantable, and receive them out in the manner hereafter mentioned. 10 *G. c.* 10. *s.* 26, 29, 30.

Owner and officer to have each a lock and key.

9. That is to say, As to coffee and tea in the first place;—If they are intended to be taken out for home consumption, the proprietor, within the bills, shall make entry with the receiver or collector in *London*, of so much as he intends to take out of the warehouse, and pay down the duty; and elsewhere shall make entry at the next office, and pay the duties to the collector; and on producing a certificate signed by such collector or receiver (certifying that he has received the duty) to the warehouse keeper, he shall deliver out so much as is mentioned in the certificate; and shall deliver a permit to accompany such coffee or tea so delivered out, which shall also be signed by an officer attending the warehouse, to prevent the seizing thereof. 10 *G. c.* 10. *s.* 26.

Taking out of the warehouse coffee and tea for home consumption.

10. And as to cocoa nuts, intended to be taken out of the warehouse, to be made into chocolate;—an entry thereof shall be made by the proprietor with the receiver or collector, as a charge on him and also on the buyer; who shall certify such entry to the warehouse keeper; and on such certificate, the quantity of cocoa nuts mentioned therein shall be delivered out with a permit signed by the officer at such warehouse, to be delivered to the officer where they are intended to be carried, that the same officer may take the same into stock. 10 *G. c.* 10. *s.* 26.

Taking out of the warehouse cocoa nuts to be made into chocolate.

11. And as to coffee, tea, and chocolate intended for exportation;—it shall be delivered out of the warehouse, on security given that it shall be exported, and not relanded; which security shall be discharged, on a certificate under the common seal of the chief magistrate in any place beyond the seas, or under the hands and seals of two known *British* merchants there, that the same were there landed, or on proof by credible persons that it was taken by enemies, or perished in the seas. 10 *G. c.* 10. *s.* 26.

Taking out of the warehouse coffee, tea, and chocolate, for exportation.

But by the 18 *G.* 2. *c.* 26. No Drawback shall be allowed on tea exported. *s.* 5. Saving that it may be exported to *Ireland*, or the *British* plantations in *America*, without paying the inland duties before mentioned. 21 *G.* 2. *c.* 14.

12. And no seller or dealer shall receive out of the warehouse, less than one hundred weight of each sort at one time; except where the importation and delivering in shall be in less quantities, or where the same shall be sold in lots or parcels less than a hundred weight. 10 *G. c.* 10. *s.* 34.

What quantity shall be taken out at a time.

13. And the warehouse keeper and officer appointed by the commissioners of the inland duties shall each of them keep a book, wherein they shall enter an account of all coffee, tea, and cocoa

Warehouse keeper and officer to keep an account.

nuts brought into and carried out of the warehouse, and the day and time when, and how much was delivered for home consumption, and how much for exportation, and the names of those for whom it was delivered out; and shall every six weeks, or oftner if required, transmit an account thereof in writing and on oath to the respective commissioners, with an account how much is remaining in the warehouse: Which said commissioners shall in one month appoint a person to inspect the books and warehouses, and examine the accounts; and if it shall appear that any was otherwise delivered out, or before payment of the duties on such coffee and tea as were sold for home consumption, or giving security for what was delivered for exportation, the warehouse keeper and officer respectively offending shall forfeit 100 *l.* and be disabled to hold any publick office. 10 *G. c.* 10. *s.* 29.

Who shall be deemed a dealer in coffee, tea, and chocolate.

14. Every person who shall keep a publick house, shop, cellar, or other warehouse, for selling of brandy or other spirituous liquors, and shall have in his custody any coffee, tea, chocolate, or cocoa nuts above six pounds weight, shall be deemed a dealer in the said commodities. 11 *G. c.* 30. *s.* 4.

Licence for retailing.

15. No person shall be permitted to sell or retail any coffee, chocolate, sherbet, or tea, without licence first had by order of the general sessions of the peace in the respective counties (certificate being first shewed, that he hath given good security for payment of the duties to the king); or from the chief magistrate of the place in whose jurisdiction he shall inhabit. And no licence shall be granted to any retailer, till such security shall be given by recognizance or otherwise: For which licence, recognizance, and security, 12 *d.* shall be given, and no more, for the payment of the excise. And persons selling without such licence and security, shall forfeit 5 *l.* a month. 15 *C.* 2. *c.* 11. *s.* 15.

Houses of manufacturing and sale to be entred.

16. Every druggist, grocer, chandler, coffee house keeper, chocolate house keeper, and other person selling or dealing in coffee, tea, and cocoa nuts, or making or selling chocolate, either by wholesale or retail, shall before he take any the said goods into his possession make entry in writing of all storehouses, shops, rooms, and other places intended to be used by him, at the office for the division; on pain of forfeiting 200 *l.* and the said goods found therein, with the canisters, bags, vessels, and other package. 10 *G. c.* 10. *s.* 10.

And no entry of any shop, warehouse, room, or utensil for carrying on any trades aforesaid, shall be deemed a legal entry, unless made in the name of the real owner of, and trader in such shop; and the person who acts as visible owner of such place, or principal manager in such trade, shall be deemed the real owner and trader, and consequently liable for any stock found there, or for not making entries, or other offences. 18 *G.* 2. *c.* 26. *s.* 8.

And none of the said goods shall be offered to sale but in places entred, or in a warehouse to be approved of by the commissioners; on pain of forfeiting the same and treble value, together with the canisters, bags, and other package. 10 *G. c.* 10. *s.* 14.

Notice of bringing in.

17. No coffee, tea, cocoa nuts, or chocolate shall be brought into any such shop or other place, without first giving notice there-

of

of to the officer of the division, and leaving with him a certificate signed by the officer of the division from whence they were brought, that the duties on such coffee, tea, and chocolate have been paid, or that they have been condemned as forfeited; and in case of bringing in of cocoa nuts, that they have been entred with the officers of the customs, or were condemned as forfeited; and expressing the quantity and quality, and where the duties were paid, or at what port the customs and duties were paid for the cocoa nuts, or were condemned; on pain of forfeiting the same and treble value, with the canisters, bags, and other package. 10 *G. c.* 10. *s.* 11.

Permit when sold to the retailer.

18. And where any of them shall be sold in the said entred places, above the weight of 6 *lb.* the officer shall, on request of the seller, give to the buyer a certificate signed by him, expressing the quantity, and the names of the buyer and seller, and that the duties have been paid, or that the cocoa nuts have been entred with the officers of the customs, or that they have been condemned as forfeited; which certificate shall be left with the officer of the division to which the same is intended to be carried, to prevent the seizing thereof. 10 *G. c.* 10. *s.* 15.

Officers to enter and survey.

19. The officers shall be permitted at all times by day, to enter all warehouses, shops, and other places, and by weighing, gaging, or otherwise, to take an account of the quantity and sorts; in the weighing whereof the owner shall be assisting, and keep just weights and scales; on pain of 100 *l.* 10 *G. c.* 10. *s.* 12.

Search for goods concealed.

20. And if any officer shall have cause to suspect, that any the said goods shall be concealed, if it is within the bills, then on oath made before two commissioners, or elsewhere, before one or more justices, setting forth the ground of his suspicion, they may by warrant authorize such officer by day or night, but if in the night then in presence of a constable, to enter the place suspected, and seize and carry away the same (if found) as forfeited, together with the bags, canisters, and other package; and if any person shall obstruct such officer, he shall forfeit 100 *l.* 10 *G. c.* 10. *s.* 13.

And if any seller or dealer shall conceal any the said goods, he shall forfeit the same and treble value, with the canisters, bags, and other package; and if any person shall obstruct the officer in seizing any the said goods by virtue of this or any future act, or after seizure shall endeavour to rescue the same, or break or damage the vessels or package; he shall forfeit 50 *l.* *s.* 39, 40.

And by the 11 *G. c.* 30. Two commissioners of any justice of peace, on complaint by an officer on oath, that he suspects any dealer not to have made true entries, setting forth in such oath the causes of his suspicion, may summon such suspected person to appear with his books, and examine him on oath touching the truth of his entry; and if he shall refuse or neglect to appear, or to make such oath, he shall forfeit 20 *l.* *s.* 12.

True manufacturing of coffee.

21. No person shall mix with coffee, to increase the weight, any butter, grease, water, or other materials; on pain of 100 *l.* and if any dealer shall knowingly buy or sell any so mixed, he shall forfeit 100 *l.* 11 *G. c.* 30. *s.* 9.

And the commiſſioners may appoint houſes and proper materials for roaſting of coffee berries, and officers to attend them, and one perſon at each houſe well ſkilled in roaſting of coffee; to which all perſons may reſort to have their coffee berries roaſted, bringing a certificate from an officer that the duties have been paid, or that it hath been condemned as forfeited; for the roaſting of which coffee ſhall be paid 8 *s.* a hundred weight. 10 *G. c.* 10. *ſ.* 31.

But the ſellers and dealers may if they think proper, ſend their own roaſters; who ſhall be permitted to roaſt the ſame, paying 3 *s.* a hundred weight. 10 *G. c.* 10. *ſ.* 32.

And during the continuance of ſuch roaſting houſes, no coffee berries ſhall be roaſted, burned, or dried, but in one ſuch houſe; on pain of forfeiting the ſame, and 5 *s.* a pound. 10 *G. c.* 10. *ſ.* 33.

And if any officer or roaſter ſhall neglect or refuſe to attend ſuch houſe, he ſhall forfeit 10 *l.* for the firſt offence, and 20 *l.* for the ſecond, and be incapable to hold any office in the revenue. 10 *G. c.* 10. *ſ.* 34.

True manufacturing of tea.

22. No dealer in tea, or manufacturer, or dyer thereof, ſhall adulterate it, or alter, or manufacture it with any drug, or mix it with any leaf or other ingredient; on pain of forfeiting the ſame, and 100 *l.* 11 *G. c.* 30. *ſ.* 5.

And by the 4 *G.* 2. *c.* 14. If any dealer in tea ſhall dye, or manufacture, any ſloe leaves, liquorice leaves, or the leaves of tea that have been uſed, or any other leaves in imitation of tea, or ſhall mix or colour ſuch leaves of tea, with *terra japonica*, ſugar, moloſſes, clay, logwood, or any other ingredients; or ſhall offer to ſale, or have in his cuſtody any ſuch leaves in imitation of tea, or any ſuch ſtained leaves of tea mixed with any ingredients; he ſhall forfeit for every pound weight thereof 10 *l.* *ſ.* 11.

True manufacturing and ſtamping of chocolate.

23. The maker of chocolate, if within the bills, ſhall weekly, and elſewhere every ſix Weeks, make entry in writing at the next office, of all chocolate made by him within that time, ſetting forth the weight thereof, on pain of 50 *l.* Which entry ſhall be upon oath of the maker or his chief workman, according to the beſt of his knowledge and belief, to be adminiſtred within the bills by ſuch officers as the commiſſioners ſhall appoint, and elſewhere by the collectors and ſuperviſors. But no perſon ſhall be obliged to go further to make entry, than the next market town. 10 *G. c.* 10. *ſ.* 17.

And he ſhall in one week within the bills, and elſewhere in ſix weeks after entry, clear off the duties, on pain of 50 *l.* beſides the duty; and he ſhall after default in payment, ſell or deliver none out till the duty is paid, on pain of treble value. 10 *G. c.* 10. *ſ.* 18.

And he ſhall at the time of entry produce the ſame ſo made, tied with thread in papers of one pound each; which ſhall be marked or ſtamped by the officers. 10 *G. c.* 10. *ſ.* 19.

And if any perſon ſhall counterfeit the ſaid ſtamp, or ſhall knowingly ſell any chocolate with a counterfeit ſtamp; or ſhall, on chocolate, for which no entry hath been made, nor the duties paid, fix any paper with the ſtamp on; he ſhall forfeit 500 *l.* and be

be committed to the next county gaol for twelve months. 10 *G. c.* 10. *s.* 22. 11 *G. c.* 30. *s.* 13.

And if any ſtamped chocolate ſhall be damaged, the owner may in preſence of an officer open it, and deliver the ſtamps to the officer, and work it over again with freſh cocoa nuts, and have it reſtamped, paying duty for what is added. 11 *G. c.* 30. *s.* 14.

But on reworking chocolate, proof ſhall be made (before the commiſſioners within the bills, and before two juſtices elſewhere) that the duties for the cocoa nuts whereof it was made, and for thoſe alſo which are added, have been paid, and the chocolate entred. 11 *G. c.* 30. *s.* 15.

Chocolate made for private families.

24. If any perſon ſhall be minded to make chocolate for his own family, and not for ſale, and ſhall give notice thereof under his hand to the officer of the diviſion, three days before he begin to make, in which notice ſhall be ſpecified the quantity of cocoa nuts deſigned to be made into chocolate, the name of the perſon to be employed in the making, and the place where; in ſuch caſe the officer ſhall give a permiſſion under his hand for making the ſame, and the place ſhall not be liable in reſpect thereof to be ſurveyed. 10 *G. c.* 10. *s.* 23.

And the perſon for whom it is made, ſhall in three days after finiſhing, make entry on oath with the officer, of the whole quantity then made by virtue of ſuch permit, and bring the ſame wrapt up as before, to have it ſtamped, and ſhall pay the duty; and in default thereof, ſhall forfeit the ſame, and treble value. *s.* 24.

And no perſon ſhall be permitted to make into chocolate for his own private uſe, leſs than half a hundred weight of cocoa nuts at a time. *s.* 25.

Penalty of retailing the ſame without a permit, or pedlars with one.

25. And if any perſon ſhall offer any tea to ſale, not having a permit; or if any pedlar or other trading perſon, going from town to town, or other mens houſes, and trading either on foot, or with any horſe or other cattle, or otherwiſe, ſhall offer any ſuch tea to ſale, altho' he have a permit; the perſon to whom it is offered to ſale, may ſeize and detain the ſame, and carry it to the next warehouſe belonging to the cuſtoms or exciſe, and bring the perſon before a juſtice of the peace to be by him committed to priſon, and proſecuted for the penalties incurred for ſuch offence; and ſuch tea may be proſecuted in the name of the perſon who ſtopped or ſeized the ſame, in like manner as if it had been ſeized by an officer. 9 *G.* 2. *c.* 35. *s.* 20.

And none of the ſaid goods above ſix pounds weight, ſhall be removed or carried from one part of the kingdom to another, without a permit ſigned by an officer, ſignifying the names and places of abode of the buyer and ſeller, and the quantity and ſpecies of the goods, and that the duty hath been paid, or the cocoa nuts entred as aforeſaid, or that they have been condemned as forfeited; on pain of forfeiting the ſame, together with the caniſters, bags, or other package: Which permit ſhall be left with the officer of the diviſion to which the ſame ſhall be carried, to prevent the ſeizure thereof; in which permit ſhall be expreſſed the time for which it ſhall continue in force. 10 *G. c.* 10. *s.* 16.

And if any person shall take out a permit for removing coffee, tea, or cocoa nuts, and shall not send away the goods within the time limited, nor return the permit, he shall forfeit treble value; and if there shall not appear a sufficient decrease made in the stock to answer the quantity in the permit, the officer may seize so much of the said stock as forfeited, as will answer the said quantity in the permit: But no person shall receive a permit, without the direction in writing of the person (or his servant) from whose stock the goods are to be removed; on pain of 50 *l.* and in default of payment, he shall be imprisoned three months. 11 *G. c.* 30. *s.* 11.

Account to be kept of small quantities consumed.

26. All sellers and dealers in any the said goods, and all makers of chocolate, and coffee or chocolate house keepers, who shall consume the same in small quantities under six pounds, shall keep an account of all coffee, tea, chocolate, and cocoa nuts which they shall consume in each day; and every night enter in a book an account of the gross quantities retailed by them under six pounds; and shall keep another book, wherein they shall enter each parcel above six pounds, which they shall sell in each day, which shall not be removed without a permit from the officer, expressing the quantity and quality, and the name of the seller and buyer, and where it is to be carried, and that the duties were paid, or the cocoa nuts entred, or that they were condemned as forfeited; which books shall be prepared by the commissioners, and by them delivered on demand to such sellers and dealers: and when the books shall be filled up, they shall be returned to the officer upon oath of the truth of the entries; and the said books shall from time to time lie open, and be perused by the officer: And if such seller or dealer shall omit his duty in regard to the said books, he shall forfeit 100 *l.* 10 *G. c.* 10. *s* 35.

But by the 12 *G. c.* 28. No dealer in cocoa nuts shall dispose of less than 28 pounds at a time, and then shall enter in writing the name and place of abode of the person to whom sold, and on demand shall produce such account to the officer; on pain of 20 *l.* for each pound of cocoa nuts otherwise disposed of, and of 20 *l.* for default about the entry. *s.* 29.

Power of the justices.

27. All the said penalties and forfeitures shall be recovered and mitigated as by the laws of excise or in the courts at *Westminster*; and be employed half to the use of the king, and half to the informer. 10 *G. c.* 10. *s.* 41. 11 *G. c.* 30. *s.* 39. 4 *G.* 2. *c.* 14. *s.* 10. 18 *G.* 2. *c.* 26. *s* 14. 24 *G.* 2. *c.* 40 *s.* 33.

And by the 12 *G. c.* 28. the penalties on the said act shall be recovered as by the laws of the customs or excise respectively. *s.* 33.

Proof to lie on the claimer.

28. And on disputes whether the duties have been paid, the proof shall lie on the claimer, and not on the officer. 10 *G. c.* 10. *s.* 28.

Condemnation and sale.

29. The commissioners shall cause all tea and coffee seized in *London*, and condemned, to be sold there; and if seized elsewhere, they shall cause it after condemnation to be brought and sold in *London*. 12 *G. c.* 28. *s* 1. Or, after having been first valued by sworn valuers, they may be sold where the commissioners shall think proper. *s.* 16.

But

But if they think fit, they may cause such tea as cannot be sold for 5 *s.* a pound, to be burnt or otherwise destroyed; and the person making seizure, to be rewarded as they shall think proper, not exceeding 1 *s.* 6 *d.* for each pound of such tea. *s.* 3.

30. But no officer of the customs, or other person, shall be intitled to any reward for any seizure of the said goods, unless he give notice of the seizure to the next officer of excise, or supervisor, in 48 hours; who shall, on such notice, take an account of the species and quantity; nor shall such goods be removed without a permit from such officer of excise, on pain of reseizure. 12 *G.* *c.* 28. *s.* 6. Reward.

31. All stock and utensils found in the shops or other places aforesaid, shall be liable to the duties and forfeitures. 18 *G.* 2. *c.* 26. *s.* 8. Utensils liable.

V. Glass.

1. By the 19 *G.* 2. *c.* 12. Certain additional duties are laid upon glass imported, over and above what it shall pay by the 2 *W.* *Sess.* 2. *c.* 4. and by the book of rates of the 12 *C.* 2. which shall be under the management of the commissioners of the customs. *s.* 2, 8. Duty on importation.

2. Moreover, there shall be paid a duty of 9 *s.* 4 *d.* a hundred weight, upon all materials, metal, or other preparation for making of crown, plate, and flint glass, and all white glass; and of 2 *s.* 4 *d.* a hundred weight, upon all materials for making common bottles, and all other green glass: To be paid by the maker; and to be under the management of the commissioners of excise. *s.* 4, 5, 6, 9. Inland duty.

3 In order whereunto, every maker of glass shall first make entry in writing at the next excise office, of his name, and of all his furnaces, pots, pot chambers, warehouses, rooms, and other places for making or keeping of glass, or of materials for making it; and if he shall use the same, without first giving notice to the proper officer, he shall forfeit 50 *l.* *s.* 10. Place of making to be entred.

4. And he shall, before he begin to fill any pot, give 12 hours notice in writing to the officer, of the time and hour when he intends to begin, with an account of the weight of the materials, and the species of glass to be made; on pain of 50 *l.* *s.* 11. Notice of beginning to work.

And if the filling be not begun pursuant to such notice, the said notice shall be void. *s.* 12.

5. The officers shall be permitted at all times, by day or night, to enter into the workhouse, warehouse, or other place for making of glass; and to weigh and take account of the quantity of materials; and shall make report thereof to the commissioners or whom they shall appoint, leaving a copy (if demanded) under his hand, for the glass maker; and if he shall not leave such copy on demand, he shall forfeit 40 *s.* *s.* 13. Officer to enter and survey.

And if any person shall obstruct any officer in the execution of his duty on this act, he shall forfeit 50 *l.* *s.* 16.

6. And the maker shall keep scales and weights at the place where the glass is made, and assist the officer in weighing; on pain of 50 *l.* *s.* 14. Maker to keep scales and weights.

Entry of glass made.

7. Every maker within the bills shall monthly, and elsewhere once in six weeks, make entry in writing at the next excise office, of the quantities of the materials used in each making, on pain of 20 *l.* which entries shall be made on oath before the commissioners within the bills, and elsewhere before the collector or supervisor. *s.* 17.

But no maker shall be obliged to go further than the market town where it is made, or the next market town, for the making such entries. *s.* 18.

Payment of the duty.

8. The maker, within the bills, shall in four weeks, and elsewhere in six weeks after entry, pay off the duties; on pain of double duty. *s.* 19.

Allowance for glass spoiled in making.

9. If any pot filled with materials shall crack or break, whereby any part thereof shall become unfit for service, on proof thereof to the commissioners where such glass house shall be situated, they shall make an allowance for the same. *s.* 15.

Exportation.

10. Any person who hath paid the duty, may export the glass; and have the duty drawn back; and if it shall be relanded, it shall be forfeited, or the value thereof, over and above the penalty of the bond given on exportation. *s.* 20, 21, 22.

And no glass shall be imported into *Ireland*, other than the manufacture of *Great Britain*; on pain of forfeiting the same, and the ship, and 10 *s.* a pound. *s.* 23.

The like penalty for exporting glass out of *Ireland*. *s.* 24.

Power of the justices.

11. The penalties to be recovered or mitigated as by the laws of excise, or in the courts at *Westminster*; and to be employed, half to the use of the king, and half to him that shall sue. *s.* 39.

VI. Hops.

Duty on hops imported.

1. By the 9 *An. c.* 12. an additional duty of 3 *d.* a pound is laid on hops imported, over and above all other duties; which shall be under the management of the officers of the customs. *s.* 1, 2, 3, 4.

And if any foreign hops shall be landed before entry and duty paid, or without warrant for landing; the same shall be forfeited, and burnt in ten days after condemnation, and the ship also shall be forfeited, and the person concerned in importing, or aiding in putting them on shore, shall forfeit 5 *l.* a hundred weight. 7 *G.* 2. *c.* 19. *s.* 1.

Duty on hops grown in Great Britain.

2. And by the said act of the 9 *An. c.* 12. there shall be paid a duty of 1 *d.* for every pound of hops grown in *Great Britain*, cured and made fit for use; the same to be paid by the owner, within six months after they shall be cured and put into bags; which duty shall be under the management of the commissioners and officers of excise. *s.* 1, 5.

Hop grounds to be entred.

3. In order whereunto, every person who shall plant or have growing any hops, for sale or not for sale, shall yearly on or before *Aug.* 1. give or send notice in writing under his hand, at the next office of excise, or to the officer of the district, of all the hop grounds in his possession, and of the name of the parish, township,

townſhip, or place, and the name of the owner or occupier; on pain of 40 *s.* an acre. 9 *An. c.* 12. *ſ.* 6.

But ſuch perſon ſhall not be obliged, for giving notice, to go further than the next market town. *ſ.* 7.

And the officer who ſhall receive the notice, ſhall in five days enter the ſame in a book to be kept at the office for that purpoſe; on pain of 40 *s.* *ſ.* 7.

Places of curing and keeping to be entred.

4. Alſo no perſon ſhall uſe any ouſt, ſtorehouſe, or other place, or any kiln for curing or keeping of hops, unleſs notice thereof ſhall have been given, on pain of 50 *l.* 9 *An. c.* 12. *ſ.* 8.

And all hops ſhall in ſix weeks after gathering, be brought to be cured and bagged at ſuch ouſts or places notified, and no other; on pain of 5 *s.* a pound. *ſ.* 9.

Officer to enter and ſurvey.

5. The officer ſhall at all times, by day or night, and if in the night in the preſence of a conſtable, be permitted on his requeſt to enter into the ouſt, ſtorehouſe, or other place, uſed by any perſon for growing, curing, or keeping of hops; and if the planter or owner ſhall obſtruct him, he ſhall forfeit 20 *l.* 9 *An. c.* 12. *ſ.* 15.

Notice of bagging and weighing.

6. The owners of hops, before they reſpectively begin to bag or weigh their hops, ſhall ſend notices in writing under their hands to the next exciſe office or officer, of the day and hour when they intend to begin either to bag or to weigh; which notice, as to ſuch as ſhall be bagged or weighed the firſt week, ſhall be given in 24 hours before; and as to every other bagging or weighing, 48 hours; on pain of 50 *l.* 6 *G. c.* 21. *ſ.* 25.

Officer to attend at the bagging and weighing.

7. And the exciſe officer ſhall attend at the bagging of every parcel of hops, and at the weighing thereof, and ſhall cauſe the weight (the tare of the bag being abated) to be marked on every bag; and ſhall cauſe an entry of the ſaid weight to be made in his book; and ſhall make return thereof in writing to the commiſſioners or whom they ſhall appoint, leaving a true copy (if demanded) of ſuch return under his hand with the planter or owner; and if he ſhall neglect or refuſe to leave ſuch copy (after demand in writing, 12 *G. c.* 28. *ſ.* 30.) he ſhall forfeit 5 *l.* 9 *An. c.* 12. *ſ.* 11.

And the allowance ſhall be made after the rate of ten pounds *per centum*, upon the weight of every bag, for the tare thereof. *ſ.* 13.

Owner to keep ſcales and weights.

8. The owners ſhall keep at their ouſts, ſtorehouſes, and places of keeping their hops, weights and ſcales; and permit the officer to uſe them; and ſhall not ſuffer any falſe weights to be uſed; on pain of 20 *l.* 6 *G. c.* 21. *ſ.* 26.

Hops may be put into caſks inſtead of bags.

9. The owners may, if they think fit, put the hops into caſks inſtead of bags; giving the like notice, and being ſubject to the ſame regulations, for caſking as for bagging. 6 *G. c.* 21. *ſ.* 27, 28.

And the officer ſhall cauſe the caſk to be weighed, and the weight to be marked on the caſk, and alſo the weight of the hops therein. *ſ.* 28.

Deceit in bagging.

10. No perſon ſhall take any hops of foreign growth out of the bags in which they are imported, and rebag the ſame in *Briti*-

tiſh

tish bagging, in order to sell or export them as *British* hops; on pain of 10 *l.* a hundred weight: And if any person shall endeavour to defraud the king of the duty, by using twice or oftner the same bag, with the officer's mark thereupon; he shall forfeit 40 *l.* 9 *An. c.* 12. *s.* 23.

Removal before bagging.

11. No planter or owner shall (on pain of 50 *l.*) remove from his oust, storehouse, or other place, any hops, until they have been cured, bagged, and weighed, and the duties ascertained; unless where the officer, after notice, shall not attend the bagging and weighing. 9 *An. c.* 12. *s.* 16.

Concealing.

12. If any planter or owner shall conceal any hops, to avoid the duties; he shall forfeit 20 *l.* and the hops concealed. 9 *An. c.* 12. *s.* 17.

Privately conveying.

13. And if any gatherer of hops, or other person, shall privately convey any hops from the place of growing, or where they shall be put in order to be cured, bagged, and weighed, with intent to defraud the king and the owner; he shall forfeit 5 *s.* a pound. 9 *An. c.* 12. *s.* 18.

Payment of the duties.

14. The planter or owner shall in six months after the hops shall be cured, bagged, or weighed, pay off the duties; on pain of double duty. 9 *An. c.* 12. *s.* 14.

Adulterating hops.

15. If any person shall mix with hops any drug or ingredient to alter the colour or scent; he shall forfeit 5 *l.* a hundred weight. 7 *G.* 2. *c.* 19. *s.* 2.

Using other things instead of hops.

16. No common brewer, innkeeper, or victualler shall use any broom, wormwood, or any other bitter ingredient, to serve instead of hops; on pain of 20 *l.* (Except the infusing of broom or wormwood into beer or ale by the retailer, after it is brewed and tunned, to make it broom or wormwood ale or beer.) 9 *An. c.* 12. *s.* 24.

Exportation.

17. Hops which have paid the duty, may be exported to *Ireland.* 9 *An. c.* 12. *s.* 21.

But there shall be no drawback of the duties. 6 *G. c.* 11. *s.* 40.

And no foreign hops, other than of *British* growth, shall be landed in *Ireland.* 7 *G.* 2. *c.* 19. *s.* 2.

Penalties how to be recovered.

18. The penalties aforesaid shall be recovered and mitigated as by the laws of excise, and distributed half to the king, and half to him that shall sue. 9 *An. c.* 12. *s.* 26. 24 *G.* 2. *c.* 40. *s.* 33.

Hops liable to distress for the duties and penalties.

19. And all hops in the custody of any planter or owner, or person in trust for him, shall be liable to the duties in arrear, and to the penalties; in the same manner as if the debtor or offender were the lawful owner. 9 *An. c.* 12. *s.* 19.

Cutting hop binds.

20. If any person shall unlawfully and maliciously cut any hop binds growing on poles, in any plantation of hops: he shall be guilty of felony without benefit of clergy. 6 *G.* 2. *c.* 37. *s.* 5, 6.

Which offence is treated of more at large in the title Black act.

VII. Leather.

1. By the 4 *W. c.* 5. and 9 *An. c.* 11. and 10 *An. c.* 26. certain additional duties are laid on all hides, skins, vellum, and parchment imported, over and above what they are charged in the book of rates: which shall be under the management of the commissioners of the customs. Duty on leather imported.

And after the duty shall be paid on importation, the officers of the customs shall cause every hide or skin to be marked, to denote the payment of the duty. 9 *An. c.* 11. *s.* 6.

2. And by the said acts of 9 *An. c.* 11. and 10 *An. c.* 26. certain duties are imposed on hides and skins, tanned, tawed, or dressed in *Great Britain*; and on vellum and parchment made in *Great Britain*; as follows: Duty on leather dressed in Great Britain.

On all tanned hides 1 *d.* ½ a pound.

Calf, kips, hogs, and dog skins tanned 1 *d.* ½ a pound.

Goat skins tanned with shomack, or otherwise, to resemble *Spanish* leather, 4 *d.* a pound.

Sheep skins tanned for roans after the nature of *Spanish* leather, 2 *d.* a pound.

Sheep skins and lamb skins tanned for glovers and bazils 1 *d.* ½ a pound.

Tanned skins not before charged 30 *l.* in the hundred, according to the real value.

All the above to be paid by the tanner.

Horse hides dressed in allom and salt or meal, or otherwise tawed, 1 *s.* 6 *d.* a hide.

Hides of steers, cows, and all other (except horse hides (dressed in allom and salt, or meal, or otherwise tawed, 3 *s.* a hide.

Calves skins and kips dressed in allom and salt or meal, or otherwise tawed, 1 *d.* ½ a pound.

Slinks so dressed or tawed, with the hair on, 3 *s.* a dozen.

Slinks so dressed or tawed, without hair, 1 *s.* a dozen.

Dog skins so dressed or tawed, 1 *s.* a dozen.

Buck and doe skins (except what paid the duty on importation) dressed in allom and salt or meal, or otherwise tawed, 6 *d.* a pound.

Kid skins so dressed or tawed (except what paid the duty on importation) 1 *s.* a dozen.

Goat skins so dressed or tawed, 2 *s.* a dozen.

Beaver skins so tawed, 2 *s.* a dozen.

Sheep skins and lamb skins so dressed or tawed, 1 *d.* ¼ a pound, and no more, altho they may have been dipped or steeped in the tanner's wooze made of bark or shomack before such dressing (3 *G. c.* 4. *s.* 13.)

All other tawed skins not before charged, 30 *l.* for every 100 *l.* value.

To be paid by the tawers or makers.

For hides and skins dressed in oil, 6 *d* a pound.

Deer, goat, and beavers skins, dressed in oil, 6 *d.* a pound.

Calves

Calves skins dressed in oil, 8 *d.* a pound.

Sheep and lamb skins dressed in oil, 3 *d.* a pound.

All skins dressed in oil, not before charged, 15 *l.* in the hundred, according to the real value.

To be paid by the oil leather dressers.

For all vellum made in *Great Britain*, 3 *s.* a dozen.

Parchment made in *Great Britain*, 1 *s.* 6 *d.* a dozen.

But such small pieces as have been commonly called pates and tails, and are tanned after they are cut off from the hides, shall not be charged with the duty by weight, but with the duty *ad valorem*; and the same need not to be marked as is hereafter directed. 9 *An. c.* 11. *s.* 46.

What it meant by hides tanned, dressed in oil, and tawed.

3. By *tanned* hides or skins, or pieces thereof, are meant only such as are tanned in wooze made of the bark of trees or shomack; and by hides and skins *dressed in oil*, are meant such as are made into leather in oil, or with any materials whereof the chiefest ingredient shall be oil; and by *tawed* hides or skins, are meant such as are dressed or made into leather in allom and salt, or meal, or other ingredients properly used by the tawers of white leather. 9 *An. c.* 11. *s.* 3.

Who shall be deemed tawers or dressers.

4. Collar makers, glovers, bridle cutters, and others who dress skins or hides, or pieces thereof, in oil, allom and salt, or meal, or other ingredients, and who cut and make the same into wares, shall be accounted tawers or dressers. 9 *An. c.* 11. *s.* 28.

Duty ad valorem how to be ascertained.

5. The value of the said hides and skins which are to pay *ad valorem*, shall be as they are worth to be sold at the next market, without respect to the duty; and the collector shall receive the duties, on the oath of such tanner, tawer, or dresser. 9 *An. c.* 11. *s.* 14.

No leather to be twice charged.

6. Any hide or skin which hath once paid the duty, shall not be charged under any other denomination. 9 *An. c.* 11. *s.* 3.

Officers for these duties.

7. The commissioners of the treasury shall appoint commissioners of these duties; who shall have the same power as the commissioners of the excise. 9 *An. c.* 11. *s.* 13, 38.

Places of working to be entred.

8. Tanners, tawers, curriers, or dressers of hides or skins, and makers of vellum or parchment, shall give notice in writing to the officer, of their names and places of abode, and of their tanhouses, yards, workhouses, mills, or other places, where they intend to tan, taw, or dress hides or skins, or make vellum or parchment, before they use the same; on pain of 50 *l.* 9 *An. c.* 11. *s.* 15.

And if any person shall not make such entry, or shall use any private tan yard, workhouse, pit, fat, mill, or place, he shall forfeit 20 *l.* and the goods found in such private tan yard or place not entred, or the value thereof, shall also be forfeited. 9 *An. c.* 11. *s.* 17.

Officers to enter and survey.

9. The officers at all seasonable times, in the day time, may enter into any tan yard, workhouse, warehouse, mill, or other place; and if the owner or occupier shall refuse him entrance, he shall forfeit 10 *l.* 9 *An. c.* 11. *s.* 17.

10. The

10. The ſaid tanners and others ſhall give notice to the officer, of their places for drying and keeping of hides or ſkins, vellum or parchment; and they ſhall give two days notice in writing to the officer, before they take the ſaid goods out of the mill, wooze, liquor, oil, or other materials, in order to be dried; and they ſhall permit the officers to take an account; and ſhall in two days after the taking out of the wooze, mill, liquor, or other materials, and before the carrying away of the ſaid goods from the place of drying, make entry with the officer of the number and quality, and verify the ſame on oath, to be adminiſtred by any juſtice of the peace, or collector or ſuperviſor; and they ſhall not remove any of the ſaid goods, from the place of drying, until the duty be firſt charged, entred, and marked. 9 *An. c.* 11. *ſ.* 16.

Notice of removing to the place of drying.

And if any perſon ſhall not ſend ſuch notice of taking the goods out of the wooze or other materials, or not make due entries, or remove any the ſaid goods contrary to this act; he ſhall forfeit 20 *l.* and alſo ſuch goods unlawfully removed, or the value thereof ſhall be forfeited. *ſ.* 17.

11. And if any tanner or other ſuch perſon ſhall conceal any hide or ſkin, vellum or parchment, or any part thereof; he ſhall forfeit 20 *l.* and alſo the goods concealed, or the value thereof. 9 *An. c.* 11. *ſ.* 17.

Concealing to avoid the duty.

12. Tanners, and other the ſaid perſons, ſhall keep ſcales and weights; and ſworn officers ſhall be appointed, for the weighing and other matters to be performed at every ſuch yard or dreſſing place. 9 *An. c.* 11. *ſ.* 18.

Tanners to keep ſcales and weights.

And if he ſhall not keep juſt ſcales and weights, or ſhall not permit his hides or ſkins to be weighed, or neglect or refuſe to bring the ſcales, or to aſſiſt at the weighing; he ſhall forfeit 50 *l.* *ſ.* 26.

13. Tanners, and other the ſaid perſons, ſhall before any the ſaid goods be removed from the place of dreſſing, drying, or keeping, give two days notice in writing to the officer (for giving of which notice he ſhall not be obliged to go further than the next market town); and ſhall permit the officer to weigh the goods chargeable by weight, and bring the ſcales, and aſſiſt in weighing; and ſhall permit the officer to take an account of the number and quality of the goods to be charged by tale; and ſhall aſcertain the value of ſuch goods as are to be charged *ad valorem*, by his oath to be taken before the ſaid officer, or a juſtice of the peace. 9 *An. c.* 11. *ſ.* 19.

Duty to be aſcertained before removal.

14. And after the duties are aſcertained by weight, tale, or value reſpectively, the officer ſhall enter the ſame in a book, and make return thereof to the commiſſioners or whom they ſhall appoint, leaving a true copy thereof under his hand, with ſuch tanner or other perſon. 9 *An. c.* 11. *ſ.* 20.

Charge by the officer.

15. Immediately after the duty ſhall be aſcertained, and entry thereof made, the officer ſhall cauſe every hide or ſkin, and every piece of a hide or ſkin, and all vellum and parchment, to be marked. 9 *An. c.* 11. *ſ.* 21.

Leather to be marked.

16. And

In what part to be marked.

16. And if ſuch tanner or other perſon ſhall deſire the mark to be made, on any particular part of the hide or ſkin; the officer ſhall mark it accordingly. 9 *An. c.* 11. *ſ.* 22.

Removing before marked.

17. And if any tanner, or other ſuch perſon, ſhall remove from his yard or drying place any the ſaid goods, before the duties ſhall be charged, and before they be marked; or if any buyer ſhall carry away the ſame before they be marked; he ſhall forfeit 50 *l.* and the ſaid goods ſo unlawfully ſold or removed, ſhall alſo be forfeited. 9 *An. c.* 11. *ſ.* 26.

Counterfeiting the ſtamp.

18. And if any perſon ſhall counterfeit the ſtamp, or knowingly ſell any the ſaid goods with a counterfeit ſtamp; he ſhall be guilty of felony without benefit of clergy. 9 *An. c.* 11. *ſ.* 44.

Leather ſtamped to be kept ſeparate.

19. And to prevent frauds between the officers and tradeſmen, all tanners, tawers, and dreſſers of hides, ſkins, vellom, and parchment, ſhall keep thoſe which have not been ſtamped, from thoſe which have, and alſo thoſe which have been laſt ſtamped, from thoſe which have been ſtamped before, for 24 hours within the bills, and for two days elſewhere; unleſs they ſhall have ſooner been weighed and taken account of by the ſurveyor or ſupervisor: on pain of 10 *l.* 5 *G. c.* 2. *ſ.* 10.

Payment of the duties.

20. Perſons within the bills of mortality ſhall pay off the duties in 14 days to the commiſſioners, and elſewhere in ſix weeks to the collectors, after the ſaid goods ſhall be marked. 9 *An. c.* 11. *ſ.* 23.

But no perſon ſhall be obliged, for payment of the duties, to go farther than the next market town. *ſ* 24.

And perſons not paying as aforeſaid ſhall forfeit double duty; and ſhall not deliver out any the ſaid goods until the duty be paid, on pain of double value. *ſ.* 25.

Tanners to balance accounts with the officers.

21. Every tanner, and other ſuch perſon, ſhall once in three months (if demanded) make an account with the officer, of the goods taken out of the wooze or other ingredients, and of his entries thereof, and balance the ſaid account by the goods which have been charged, and thoſe which are in his poſſeſſion unmarked and uncharged; on pain of 50 *l.* 9 *An. c.* 11. *ſ.* 27.

Exportation.

22. On exportation of hides or ſkins, tanned, tawed, or dreſſed, and marked, and of boots, ſhoes, gloves, or other manufactures made of leather, chargeable for the duty by weight; a drawback ſhall be allowed of two thirds of the duty. 9 *An. c.* 11. *ſ.* 39. 12 *An. ſt.* 2. *c* 9. *ſ* 65.

Except that for tanned leather manufactured into boots, ſhoes, gloves, and other wares; a drawback of 1 *d.* $\frac{1}{2}$ for a pound weight, ſhall be allowed in lieu of the ſaid two thirds of the duty. 12 *An. ſt.* 2. *c.* 9. *ſ.* 64.

Penalties how recoverable.

23. Any two juſtices reſiding near, may hear and determine offences; who ſhall on information or complaint in three months after ſeizure made, or offence committed, ſummon the party accuſed, and the witneſſes, and on appearance or contempt of the party (on proof of notice given) ſhall examine witneſſes on oath, and give judgment, and iſſue warrants for levying the pecuniary

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penalties by distress and sale (if not redeemed in six days). 9 *An. c.* 11. *s.* 36.

24. And they may mitigate the penalties, the charges of the officers being always allowed over and above the mitigation; and so as the mitigation do not reduce the penalties to less than one fourth part, over and above the charges. 9 *An. c.* 11. *s.* 37. Mitigation.

25. Persons aggrieved may appeal to the next sessions, who may determine the same, and issue warrants for levying the penalties. 9 *An. c.* 11. *s.* 36. Appeal.

26. And no *certiorari* shall be allowed. 9 *An. c.* 11. *s.* 47. Certiorari.

VIII. Linen cloth, and silks.

1. By the 10 *An. c.* 19. and the 12 *An. st.* 1. *c.* 9. There shall be paid for all chequered and striped linens, and upon all linens printed, painted, stained, or dyed, after the manufacture, or in the thread or yarn, in any foreign parts, which shall be imported, and may lawfully be worn, over and above other duties, 30 *l.* for every 100 *l.* value; which shall be under the management of the commissioners of the customs. Duty on importation.

Except lawns, striped or chequered linens, being all white, and neckcloths striped at the end only, and also barras, or packing canvas, and buckrams. 12 *An. st.* 2. *c.* 9. *s.* 5. 12 *An. st.* 2. *c.* 19.

And after the duty is paid, the said printed linens imported shall be stamped by the officers of the customs. 10 *An. c.* 19. *s.* 68.

2. By the 10 *An. c.* 19. and the 12 *An. st.* 2. *c.* 9. Over and above the duties payable on importation of any of them, there shall be paid, for all *silks* printed, stained, or painted in *Great Britain* (silk handkerchiefs excepted) 12 *d.* a yard in length, reckoning half a yard for the breadth. Home duties.

And for all *silk handkerchiefs* so printed, stained, or painted in *Great Britain*, 4 *d.* a yard square.

And for all *callicoes* printed, stained, painted, or dyed in *Great Britain*, 6 *d.* for every yard in length, reckoning one yard wide, or within one eighth thereof.

And for all *linen* stuffs printed, stained, painted, or dyed in *Great Britain*, 3 *d.* a yard in length, reckoning yard wide.

Except such callicoes, linens, and fustians as shall be dyed throughout of one colour only, and stuffs made of woollen, or whereof the greatest part in value shall be woollen.

3. But it is to be observed, that such painted or stained callicoes cannot be of use for wearing apparel, and therefore the printing or staining of them must be chiefly in order for exportation; for by the 7 *G. st.* 1. *c.* 7. it is enacted, that no person shall use or wear in any apparel, any printed, painted, stained, or dyed callico; on pain of 5 *l.* to the informer, on conviction on the oath of one witness before one justice; who shall, on information on oath in six days after the offence, summon the party, and upon his appearance or contempt examine the matter, and on proof by confession or oath of one witness determine the same, and on conviction cause the penalty to be levied by distress and sale, rendring Observation as to callicoes.

the overplus (charges of diſtreſs and ſale being firſt deducted): Provided that perſons aggrieved may appeal to the next quarter ſeſſions, giving ſix days notice. *ſ.* 1.

And if any perſon ſhall offer the ſame to ſale, or any houſhold furniture made up of, or mixed therewith, unleſs for exportation; he ſhall forfeit 20*l.* half to the informer, and half to the poor of the pariſh or place where the offence ſhall be committed, to be recovered in the courts at *Weſtminſter*, with full coſts, on proſecution in ſix months; and if he is a ſteward or other officer of a corporation, he ſhall alſo forfeit his office. *ſ.* 2, 4.

And no perſon ſhall uſe the ſame in any houſhold furniture, on like pain of 20*l.* *ſ.* 3.

But this ſhall not extend to callicoes made up in houſhold furniture before *Dec.* 25. 1722. *ſ.* 6.

Nor to callicoes dyed all blue. *ſ.* 11.

Nor to prohibit wearing, or uſing in houſhold furniture, any ſtuff made of cotton, or mixed therewith, printed or painted; or any callico chequered or ſtriped; or any callico ſtitched or flowered in foreign parts with any colour (muſlins, neckcloths, and fuſtians excepted). *ſ.* 10.

Houſes to be entered.

4. Every ſuch printer, painter, ſtainer, or dyer, ſhall give notice in writing at the next office, of his name and place of abode, and where he intends to work; on pain of 30*l.* 10 *An. c.* 19. *ſ.* 71.

And by the 1 *G. ſt.* 2. *c.* 36. Where any perſon ſhall take upon him, to print, paint, ſtain, or dye any ſilks, linens, or ſtuffs at any other place than the place of his uſual reſidence or exerciſe of his trade; he ſhall firſt make entry with the officer of the diviſion, where he intends to do the ſame, and pay down the duties, on pain of 50*l.* and alſo the ſaid goods ſhall be ſeized and forfeited. *ſ.* 21.

Officer to enter and take account.

5. The officers ſhall at all times by day or night, and if by night in preſence of a conſtable, be permitted on requeſt to enter ſuch perſon's houſe, workhouſe, drying place, warehouſe, field, or other place uſed by him, and take an account, and ſhall make thereof a report in writing to the commiſſioners or to whom they ſhall appoint, leaving a copy if demanded, under his hand; and if he ſhall make default in leaving ſuch copy (after demand in writing, 12 *G. c.* 28. *ſ.* 30.), he ſhall forfeit 40*s.* 10 *An. c.* 19. *ſ.* 75.

Obſtructing the officer.

6. And none of the ſaid perſons ſhall obſtruct the officer in execution of his duty; on pain of 20*l.* 10 *An. c.* 19. *ſ.* 78.

Entry of goods made.

7. Every ſuch printer, and other perſon, ſhall once in ſix weeks make entry in writing at the next office, on oath before the collector or ſupervisor, of all ſuch goods by them made, containing the kinds and quantity, and the names and places of abode of the owners (if they are not their own); on pain of 50*l.* 10 *An. c.* 19. *ſ.* 72.

But no perſon ſhall be obliged to go to make entry, further than the next market town. 10 *An. c.* 19. *ſ.* 73.

Officer may charge for goods miſſing.

8. If the officer ſhall miſs any quantity of the ſaid goods, whereof he had taken an account at his laſt ſurvey, and ſhall not

on reasonable demand receive satisfaction what is become of the same; the officer may charge such person with the duties of the goods so missing, as if they were printed, painted, stained, or dyed. 10 *An. c.* 19. *s.* 77.

Goods concealed.

9. And if they shall conceal any the said goods, to avoid the duty; they shall forfeit 20 *l.* And all the silks, callicoes, linens, and stuffs found in any private workhouse, or other place whereof no notice hath been given, or the value thereof, shall be forfeited. 10 *An. c.* 19. *s.* 82.

Payment of the duties.

10. They shall, within six weeks after entry, clear off the duties; on pain of forfeiting double: and if they shall deliver out any such goods, after default in payment of the duties, before the same shall be cleared off, they shall forfeit double value of the goods. 10 *An. c.* 19. *s.* 74.

Removing before stamped.

11. And they shall not remove any the said goods, till the officer hath taken account thereof, and until each piece be stamped or marked; on pain of 20 *l.* And the same so carried away without being marked, and found in the possession of any draper or other person for his use, for sale, may be seized, or the value thereof recovered. 10 *An. c.* 19. *s.* 79.

Goods surveyed to be kept separate.

12. And they shall keep the goods which have not been surveyed, separate from the goods which have been surveyed; on pain of 5 *l.* 10 *An. c.* 19. *s.* 81.

Search for goods unstamped.

13. And on oath by any credible person, that he hath reason to suspect, that any the said goods are in the possession of any draper or other person dealing therein, or of any other to his use, for sale, unstamped; the commissioners within the bills, or any two justices elsewhere, may issue their warrants, requiring some officer of the said duties (with a constable) in the day time to search for the same, and to open doors, chests, trunks, and package, and to seize such goods, and bring them to the next office. 10 *An. c.* 19. *s.* 98.

Goods found unstamped may be seized.

14. And if any the said goods shall be found in any place, on land or water (except on shipboard for exportation) without being marked with a stamp or seal, denoting that the duties have been paid or charged; the same shall be forfeited, and may be seized by any officer of the customs or excise, and the person in whose custody they are found shall forfeit 50 *l.* 5 *G. c.* 11. *s.* 15.

Counterfeiting the stamps.

15. And if any person shall counterfeit the stamp, he shall be guilty of felony without benefit of clergy. 10 *An. c.* 19. *s.* 97.

And if any person shall knowingly sell any the said goods with a counterfeit stamp, he shall forfeit 100 *l.* and be set in the pillory in some publick place two hours. *id.*

Exportation.

16. The said goods having paid the duty, may be exported; and there shall be a drawback of the duties. 10 *An. c.* 19. *s.* 94, 95, 96. 12 *An. st.* 2. *c.* 9. *s.* 15.

Power of the justices.

17. The penalties (except as is abovementioned in relation to callicoes) may be sued for, levied, and mitigated as by the laws of excise, or in the courts at *Westminster*; and shall be employed half to the use of the king, and half to him that shall discover, inform, or sue. 10 *An. c.* 19. *s.* 92. 24 *G.* 2. *c.* 40. *s.* 33.

Utensils liable.

18. And all the utensils and instruments for printing, painting, staining, or dying such goods, in custody of any the said persons, or any other to his use, shall be liable to all arrears of the duty, and to all penalties concerning the same, in like manner as if such person were the lawful owner. 10 *An. c.* 19. *s.* 83.

IX. *Malt.*

No malt to be imported.

1. By the 12 *An. st.* 1. *c.* 2. No malt shall be imported, on pain of forfeiting the same, and the value thereof. *s.* 26.

And by the yearly acts, if it is brought in from *Scotland* by sea, it shall be entred at the port of landing, and pay the like duty as *English* malt, unless a certificate is produced that it hath paid the duty of 3 *d.* a bushel in *Scotland*, and then it shall only pay 3 *d.* more, to make it equal with the *English*; and if it is brought by land, it shall be carried thro' *Berwick* or *Carlisle*, and there pay in like manner; on pain of forfeiting the same or the value thereof; and if it is carried beyond *Berwick* or *Carlisle*, without entry or payment, the officers of excise may seize the same. 28 *G.* 2. *c.* 2. *s.* 7.

Duty on malt.

2. By the 12 *An. st.* 1. *c.* 2. (which is continued yearly) there shall be paid by the maker for all malt made in *England* (except it be made for exportation only, 12 *G. c.* 4. *s.* 48.) a duty of 6 *d.* a bushel. *s.* 1.

What shall be deemed a bushel.

3. And every round bushel with a plain bottom, 18 ½ inches wide throughout, and eight inches deep, shall be deemed a legal *Winchester* bushel. 12 *An. st.* 1. *c.* 2. *s.* 7.

Officers for these duties.

4. The said duty shall be under the management of the commissioners and officers of excise 12 *An. st.* 1. *c.* 2. *s.* 3.

Places of making to be entred.

5. No person making malt (other than compounders) shall set up, alter, or use any cistern, uting fat, utensil, or other vessel, for the wetting or steeping barley or other corn, or any kiln, floor, room, or other place for making or keeping of malt, without first giving notice in writing at the next office of excise; or shall keep or use any private cistern or other vessel for the wetting his barley or corn, other than such as are known and made use of in his common malting house, on pain of 50 *l.* 12 *An. st.* 1. *c.* 2. *s.* 36.

Officer to enter and survey.

6. The officer shall in the day time be permitted, on request, to enter the house, malt house, and all other places belonging to or used by any maker of malt *(either for sale or not for sale)*; and to gage all cisterns, uting fats, and other vessels used for wetting or steeping corn, and take account of the quantity; and shall thereof make return to the commissioners, or whom they shall appoint, leaving a copy with such maltster; and if any such maltster shall refuse to permit such officer, he shall forfeit 20 *l.* 12 *An. st.* 1. *c.* 2. *s.* 4.

Or if he shall refuse or neglect (after demand in writing, 12 *G. c.* 28. *s.* 30.) to leave a copy of the gage for the maker, at the time of taking the gage; he shall forfeit 40 *s.* *s.* 31.

And by another clause in the said act, the officer shall on request be permitted, by night or by day, but if in the night then in presence

sence of a constable, to enter the house, malt house, and other place belonging to or made use of by any maker of malt *for sale*, common brewer, innkeeper, victualler, distiller, or vinegar maker making malt, to gage and take an account of the corn wetting or wetted; and if such maker shall refuse to permit him, he shall forfeit 20 *l.* *s.* 34.

7. And by a general clause in the 1 *G.* *st.* 2. *c.* 2. If any maker of malt for sale, shall obstruct any officer of excise, in the execution of any of the powers given him for securing the said duties, he shall forfeit 10 *l.* *s.* 4. Obstructing the officer.

8. The officers shall measure corn making into malt, by the gage only, and not by the bushel. 12 *An.* *st.* 1. *c.* 2. *s.* 17. Manner of gaging.

9. No person shall make any barley malt (except in *June*, *July*, and *August*) but that the same shall have in making thereof, that is, in the fat, floor, steeping, and drying three weeks at least; nor in *June*, *July*, and *August*, but that it shall have 17 days at the least (unless it be for his own house): on pain of forfeiting for every quarter 2 *s.* half to the king, and half to him that shall sue: And the justices in sessions, and the steward in the leet, may hear and determine the same, as well by presentment of 12 men, as by accusation or information of two honest witnesses. 2 & 3 *Ed.* 6. *c.* 10. *s.* 2, 3, 4, 5. Time for making.

10. If any person shall put to sale any malt not well trodden, rubbed, and fanned, whereby there may be conveniently fanned out of one quarter half a peck of dust or more; he shall forfeit for every quarter 20 *d.* half to the king, and half to him that shall sue in like manner in the sessions or leet. 2 & 3 *Ed.* 6. *c.* 10. *s.* 3, 4. Dressing of malt.

11. No person (except it be for his own house) shall mingle any malt, not well made, or made of mow-burnt, or spired barley, with other good malt, and after put the same to sale; on pain to forfeit for every quarter 2 *s.* half to the king, and half to him that shall sue in like manner in the sessions or leet. 2 & 3 *Ed.* 6. *c.* 10. *s.* 3, 4, 5. Mixing bad malt with good.

And the bailiffs and constables of the town where malt shall be made, or put to sale, may search the same: and if they shall find it to be evil made, or mingled with evil malt, they shall with the advice of one justice cause it to be sold to such persons, and at such reasonable prices, and under the common price of the market, as to him shall seem necessary and expedient. *s.* 4.

12. If any maltster (other than compounders) shall force together in the cistern, uting fat, or couch, any corn steeped, in order to the making into malt; he shall forfeit 2 *s.* a bushel. 12 *An.* *st.* 1. *c.* 2. *s.* 18. 6 *G.* *c.* 21. *s.* 8. Pressing malt in the cistern.

13. No maker of malt (other than compounders) shall mix corn of one wetting with corn of a former wetting; or mix any of his couches or floors, with corn of a former wetting, before the same is put on the kiln for drying: on pain of 5 *s.* a bushel. 2 *G.* 2. *c.* 1. *s.* 11. Mixing with corn of a former wetting.

14. If any dealer in malt shall, with malt, fraudulently mix any unmalted corn, or sell or expose to sale any such mixture, or Mixing malt with unmalted corn.

ſhall attempt to ſhip off any ſuch mixture in order to export the ſame; he ſhall forfeit 5 *s.* a buſhel. 1 *G. ſt.* 2. *c.* 2. *ſ.* 13.

Concealing malt to avoid the duty.

15. If any maker of malt ſhall fraudulently conceal any malt from the view of the gager; he ſhall forfeit 10 *s.* a buſhel. 12 *An. ſt.* 1. *c.* 2. *ſ.* 35.

Allowance for malt ſwelling.

16. Out of every 20 buſhels charged by the gager, there ſhall be an allowance made of malt charged in the uting fat, ciſtern, or other veſſel, wherein the ſame ſhall be found wetting or ſteeping, or on the floor within 30 hours after the ſame ſhall be thrown out of ſuch veſſel,——of four buſhels, for the difference between the quantity when it is wet and ſwoln, and when it is converted into dry malt. 12 *An. ſt.* 1. *c.* 2. *ſ.* 20.

And if any corn that hath been ſteeped be found working or growing upon the floor before it is put upon the kiln, which when dried will not anſwer ſo great a quantity from the floor as from the ciſtern; out of every 20 buſhels ſo charged upon the floor, there ſhall be allowed to the maker of the malt which ſhall be gaged upon the floor, after it hath been thrown out of the ciſtern 30 hours or more, and before it ſhall be dryed, ten buſhels, for the difference between the quantity when it is making upon the floor, and when it is dried. 12 *An. ſt.* 1. *c.* 2. *ſ.* 28.

Entry of malt made.

17. The maltſter ſhall monthly make entry at the office of exciſe, of all the malt made (either for ſale or not for ſale) in ſuch month; on pain of 10 *l.* 12 *An. ſt.* 1. *c.* 2. *ſ.* 4.

Payment of the duty.

18. And he ſhall, within four months after entry, pay off the duties, on pain of forfeiting double; and after ſuch default, he ſhall not ſell or carry out any malt until the duty is paid, on pain of double value. 12 *An. ſt.* 1. *c.* 2. *ſ.* 6. 1 *G. ſt.* 2. *c.* 2. *ſ.* 8.

Drawback of the duty for malt damaged.

19. After the duty is paid, if any quantity ſhall be damaged by the ſinking of the veſſel in which the malt ſhall be tranſported from one part of the kingdom to another; the juſtices ſhall at the next ſeſſions, on proof of ſuch damage and of the payment of the duty, ſettle the quantity of the damage, and the allowance to be made in reſpect thereof, and give a certificate of the ſum allowed, which ſhall bear the ſame proportion to the whole duty, as the damage ſhall bear to the value of the malt: on producing of which certificate, the officer ſhall repay or allow to the proprietor the ſum certified. 12 *An. ſt.* 1. *c.* 2. *ſ.* 14.

But where ſuch loſs ſhall happen, the perſon who ſhall ſuſtain the ſame, ſhall three days before the next ſeſſions, leave notice thereof in writing with the collector of the diſtrict where the loſs ſhall happen, and of his intention of applying to the ſaid ſeſſions. *ſ.* 15.

Drawback for malt perished.

20. After the duty is paid, if any malt ſhall be deſtroyed by fire, by burning of the place where it is kept; or periſh by water, by caſting away of the veſſel in which it is tranſported: the owner may make proof thereof by two witneſſes on oath, and of his having paid the duty, at the next quarter ſeſſions where ſuch accident ſhall happen; who ſhall grant a certificate of ſuch loſs, on producing of which, the duty ſhall be repaid. 12 *An. ſt.* 1. *c.* 2. *ſ.* 27.

Compounding.

21. The commiſſioners, or ſuch perſons as they ſhall appoint, and in default of ſuch appointment the collector and ſuperviſor for

for the division, may compound for the duties of malt made to be consumed in private families, at 5 *s.* a head by the year; and the houses of such persons compounding shall not be liable to the duty, or to the survey of the officers. 12 *An. st.* 1. *c.* 2. *s.* 11.

But if any such person shall sell or deliver out any malt, or shall permit any other person to make malt in his house, or shall sell any malt liquor, or shall have more persons in his family than he compounds for, without giving notice of them to the officer of excise at the next quarter day; he shall forfeit 5 *l.* and lose the benefit of his composition, and for every bushel of malt so fraudulently sold or made, he shall forfeit 20 *s.* *s.* 12.

22. No malt entred and made for exportation only, shall be liable to the duties; and no drawback shall be allowed for any malt exported. 12 *G.* *c.* 4. *s.* 48. Exportation.

But the maker shall be allowed, in consideration of his extraordinary charge and trouble, 3 *d.* for every quarter made for exportation. *s.* 59.

And by the 28 *G.* 2. *c.* 2. There shall be allowed for every 20 quarters of grain made into malt for exportation, thirty quarters of malt, and no more, on exportation, tho' by steeping it shall run out into any greater quantity. *s.* 10.

And the maker, before he shall begin to wet or steep any steeping of corn to be made into malt for exportation, shall leave notice in writing with the officer, of the quantity of corn intended to be contained in each steeping, on pain of 50 *l.* and the same shall be kept separate from all other corn to be made into malt for home consumption, on pain of 5 *s.* a bushel. 12 *G.* *c.* 4. *s.* 49, 58.

And no maker of malt shall begin to wet corn to make into malt for exportation, above six days before all the corn he may have working on his floors for home consumption shall be dried off; nor shall he begin to wet corn for home consumption, above six days before all the corn on his floors for exportation be dried and locked up, on pain of 5 *s.* a bushel. *s.* 50.

And the maker shall keep the whole quantity of his corn making into malt for exportation, of one steeping or wetting, when the same shall be on the kiln, or after it shall be taken off the kiln, separate from any former steeping or wetting, until it hath been measured in presence of the officer; on pain of 50 *l.* 3 *G.* 2. *c.* 7. *s.* 16.

And the officers, during the steeping of the corn so intended for exportation, and till it be dried and locked up, may gage and take an account thereof, in all its operations, as in case the duties were to be charged thereon. 12 *G.* *c.* 4. *s.* 52.

And persons opposing the officers in the execution of this act, shall forfeit 50 *l.* 12 *G.* *c.* 4. *s.* 58.

And the said maker shall give notice in writing to the officer, or leave notice at the next excise office, of the hour when he intends to take any malt off the kiln, that he may attend the measuring; and after it has been measured, it shall (on pain of 50 *l.*) be immediately carried on shipboard, or else into storehouses, to be provided by such maker, to be there kept apart from all other

malt, under two locks; one to be provided by the proprietor, and the other by the officer at the expence of the proprietor, whereof one key to be kept by the proprietor, and the other by the officer, till the same be delivered out for exportation. 12 G. c. 4. s. 51, 58. 3 G. 2. c. 7. s. 17.

And if he, or any person with his privity, shall open such lock, or make other entrance into the place, or carry any of it away, without consent of the officer, or notice given to him; he shall forfeit 100 l. 3 G. 2. c. 7. s. 18.

And when any maker or proprietor shall be desirous to take away any of the malt for exportation, and shall thereof give notice in writing to the officer 40 hours before the time he shall desire to take out the same, expressing in such notice the quantity of the malt, and the port to which it is to be removed; the officer shall attend at the place where the malt is locked up, and see it measured and delivered out. 12 G. c. 4. s. 53.

And the officer shall keep an account of the malt so delivered out, and of the person to whom it belongs, and shall give such person a certificate to the officer of the division to which it is intended to be removed, who shall file the same, and make an entry thereof; and if the proprietor shall neglect to deliver such certificate, he shall forfeit 50 l. 12 G. c. 4. s. 54.

And persons intending to ship malt for exportation, shall give at least 48 hours notice before they begin to put it on board, to the officer of the port in writing, of the hour when such shipping is intended to be begun, and the name of the ship; on pain of 5 s. a bushel. 12 G. c. 4. s. 57.

And during the shipping, at all such times as the proprietor shall not be actually shipping merchandizes, the hatches of the ships shall be kept locked with two locks at each hatch, one to be provided and the key kept by the proprietor, and the other by the officer; and the hatches shall be so kept locked, from the time the ships shall be loaded till they be ready to sail. 12 G. c. 4. s. 56.

And persons breaking open the hatches of any ship so locked up, shall forfeit 50 l. 12 G. c. 4. s. 58.

And the officers may not only attend the measuring of such malt, but continue on board the ships till they be cleared of their ports. 12 G. c. 4. s. 55.

And if it shall be relanded after shipping for exportation, besides the penalty of the bond which shall be given for its exportation, the same shall be forfeited, and treble the value. 28 G. 2. c. 2. s. 12.

And the maker who shall use any such storehouse for keeping of malt for exportation, shall every nine months after the last clearing, clear out the same, on pain of 50 l. 3 G. 2. c. 7. s. 20. Or 5 s. a bushel: 12 G. c. 4. s. 57. And by the 28 G. 2. c. 2. he shall clear out in 15 months, on pain of 50 l. s. 16, 27.

And if any unmalted oats or barley be found mixed among malt shipped for exportation, the person shipping the same shall forfeit 5 s. a bushel. 6 G. c. 21. s. 4.

And

And if ground malt ſhall be exported, it ſhall be computed at ſo many buſhels as it contained before it was ground. 12 *An. ſt.* 1. *c.* 2. *ſ.* 30.

23. The penalties relating to this article (except where it is otherwiſe above directed) ſhall be ſued for, levied, and mitigated as by the laws of exciſe, or in the courts at *Weſtminſter*; and be employed half to the uſe of the king, and half to him that ſhall ſue. 12 *An. ſt.* 1. *c.* 2. *ſ.* 9. 24 *G.* 2. *c.* 40. *ſ.* 33. Power of the juſtices.

24. Perſons aggrieved by any judgment of the juſtices, may appeal to the next quarter ſeſſions, giving ſix days notice in writing; but if there be not ſix days between the order of the juſtices and the ſeſſions, the appeal may be at the ſecond ſeſſions. 12 *An. ſt.* 1. *c.* 2. *ſ.* 37, 38. 1 *G.* 2. *ſt.* 2. *c.* 16. *ſ.* 3. Appeal.

And the ſeſſions may award coſts to either party, to be levied by warrant of the juſtices or two of them, on the goods of the party. 12 *An. ſt.* 1. *c.* 2. *ſ.* 38.

25. And no *certiorari* ſhall be allowed, to ſet aſide any order of the juſtices. 12 *An. ſt.* 1. *c.* 2. *ſ.* 37. Certiorari.

26. And all malt in cuſtody of the maker, ſhall be liable to the duties and penalties, in the ſame manner as if he were the lawful owner. 12 *An. ſt.* 1. *c.* 2. *ſ.* 10. Malt liable to the duties and penalties.

Note; The Statute of the 12 *An. ſt.* 1. *c.* 2. which is the foundation of all the annual acts relating to the duties on malt, is omitted in its proper place in Mr. *Hawkins*'s edition of the ſtatutes; as are alſo divers other clauſes, which are here inſerted out of ſeveral of the other yearly malt acts: which ſeemeth to indicate that the learned editors had not thoroughly conſidered this article; ſuppoſing perhaps, that as the duties do expire annually, ſo every clauſe in the ſaid acts relating thereunto did expire likewiſe: But they have rectified this omiſſion in part, by inſerting the ſaid act of the 12 *Ann.* in the appendix, Vol. 6.

X. Paper.

1. By the 10 *An. c.* 19. and 12 *An. ſt.* 2. *c.* 9. (which are in part altered and explained by the 12 *An. c.* 19. and 11 *G. c.* 7.) certain duties are impoſed on paper imported; which ſhall be under the management of the commiſſioners of the cuſtoms. Duty on paper imported.

But old rags, old ropes, or junks, or old fiſhing nets may be imported duty free. 11 *G. c.* 7. *ſ.* 10.

2. And by the ſaid acts of 10 *An. c.* 19. and 12 *An. ſt.* 2. *c.* 9. certain duties are laid on all paper made, and alſo on all paper painted in *Great Britain*, as followeth: Duty on paper made in Great Britain.

	s.	*d.*
For every ream (at 20 quires of 24 ſheets each to the ream) of demy fine	2	3
Demy ſecond	1	6
Crown fine	1	6
Crown ſecond	1	1½
Fool's cap fine	1	6
Fool's cap ſecond	1	1½

	s.	d.
Fine pots	1	6
Second pots	0	9
Brown large cap	0	9
Small ordinary brown	0	6

Whited brown 9*d.* a bundle, each bundle containing 40 quires.

Pasteboards, mildboards, and scaleboards, 3*s.* a hundred weight.

All other paper not particularly charged, after the rate of 18*l.* for every 100*l.* value.

Painted paper (beside the duty paid for the paper before painting) 1½*d.* a yard square.

But pasteboard made of paper that hath paid the duty, shall not be charged with further duty.

And books printed at *Oxford* or *Cambridge*, in *Latin*, *Greek*, *Oriental*, or northern languages, shall have a drawback of the duty on paper.

The said paper paying *ad valorem* shall be computed as it shall be worth to be sold at the next market town, by the oath of the maker or his chief workman, according to his knowledge and belief, to be taken before the collector or supervisor.

Officers of the duties on paper.

3. The commissioners of the treasury shall appoint commissioners of these duties; and they shall substitute inferior officers. 10 *An. c.* 19. *s.* 41.

Places of making to be entred.

4. The maker or painter shall give notice in writing at the next office, of his name and place of abode, and where he intends to make the same; on pain that if he makes any before such notice, he shall forfeit 30*l.* 10 *An. c.* 19. *s.* 43.

And no person shall use any place for drying the same, or making it fit for use, other than such common place whereof he hath given notice; on pain of 20*l.* *s.* 44.

And all paper, materials, and utensils found in any private workhouse or other place, for which no entry hath been made or notice given, shall be forfeited. *s.* 54.

Officer to enter and take account.

5. The officer shall by day or night, and if in the night in presence of a constable, be permitted on request to enter into the house, mill, yard, drying house, warehouse, or other place, and take an account, and make report thereof to the commissioners or whom they shall appoint, and leave a copy (if demanded) of such report under his hand with the maker; and if he shall not leave such copy (after demand in writing, 12 *G. c.* 28. *s.* 30.) he shall forfeit 40*s.* 10 *An. c.* 19. *s.* 48.

And he shall be permitted to take an account of the quantity of rags, cordage, and other materials, and of all paper in the possession of any painter or stainer, and of their proceedings in making, or in painting or staining it. 10 *An. c.* 19. *s* 50.

Mark on paper before painting.

6. And before any paper shall be printed, painted, or stained, the officer shall be permitted to take account of the dimensions, and shall stamp or seal every sheet and piece, to denote that such account hath been taken; and if the officer shall miss any quantity whereof he had so taken an account, and shall not on reasonable demand receive satisfaction what is become of it, he may charge the duties for it. 1 *G. st.* 2. *c.* 36. *s.* 17.

7. And

7. And if any person shall obstruct any officer, in the execution of his duty, he shall forfeit 20 *l.* 10 *An. c.* 19. *s.* 50. Obstructing the officer.

8. No maker shall remove any paper of which no account hath been taken, without giving two days notice to the officer; on pain of 20 *l.* 10 *An. c.* 19. *s.* 51. Removing before account taken.

And no person shall remove any such painted paper, until the officer hath taken an account of the quantity thereof, and until every piece or parcel shall be marked or stamped; on pain of 20 *l.* 1 *G. st.* 2. *c.* 36. *s.* 18.

9. And the maker or stainer concealing any paper or materials, shall forfeit 20 *l.* 10 *An. c.* 19. *s.* 53. Concealing from the officer.

10. And the maker and stainer shall keep separate the paper which is unsurveyed, for 48 hours after making or staining, unless it shall be sooner surveyed by the officer; on pain of 50 *l.* 10 *An. c.* 19. *s.* 52. Paper unsurveyed to be kept separate.

11. The maker or painter shall once in six weeks make entry on oath at the next office, of all paper made by him fit for use, with the kinds and quantities; on pain of 50 *l.* 10 *An. c.* 19. *s.* 45. Entry of paper made.

But no person shall be obliged to go to make entry, farther than the next market town. *s.* 46.

12. And the duty shall be cleared off in six weeks after entry, on pain of double duty; and after default in payment, no person shall sell or deliver any out, till the duty is cleared off, on pain of double value of such paper sold or delivered out. 10 *An. c.* 19. *s.* 47. Payment of the duty.

13. Paper that hath paid the duty may be exported, and the duties shall be drawn back. 10 *An. c.* 19. *s.* 57, 58, 59. Exportation.

But there shall be no drawback allowed on foreign paper exported. 10 *G.* 2. *c.* 27.

14. All the excise laws shall be in force for managing these duties; and the penalties shall be sued for, levied, mitigated, and disposed of, as by the laws of excise. 10 *An. c.* 19. *s.* 60, 61. 24 *G.* 2. *c.* 40. *s.* 33. Power of the justices.

15. And all paper, materials, and utensils, in custody of the maker or stainer, or of any to his use, or in trust for him, shall be liable to all duties in arrear, and to all forfeitures relating to the said duties, in the same manner as if the offender or debtor were the lawful owner. 10 *An. c.* 19. *s.* 55. Paper and utensils liable to distress.

For the stamp duties on paper, see title **Stamps.**

XI. Plate.

1. By the 4 *W. c.* 5. and 6 *G. c.* 11. Additional duties are laid on plate imported, over and above what it is charged in the book of rates: which shall be under the management of the commissioners of the customs. Duty on plate imported.

2. By the 6 *G. c.* 11. For all silver plate made in *Great Britain*, a duty of 6 *d.* an ounce shall be paid by the maker. *s.* 4. Duty on plate made in Great Britain.

But manufactures of silver, under three penny weights (except handles, hafts, spoons, thimbles, buckles, clasps, or buttons) shall not be chargeable with the duty. 7 *G. st.* 1. *c.* 20. *s.* 34.

3. And

Officers for these duties.

3. And the commissioners of the treasury shall appoint commissioners for the management of these duties; who shall substitute inferior officers. 6 *G. c.* 11. *s.* 6.

Assayers.

4. Moreover, to prevent frauds in the true making of plate, it is enacted by the 12 & 13 *W. c.* 4. and 1 *An. st.* 1. *c.* 9. that (besides the city of *London*) *York*, *Exeter*, *Bristol*, *Chester*, *Norwich*, and *Newcastle upon Tyne* shall be appointed for the assaying and marking of plate.

And the goldsmiths, silversmiths, and plateworkers in the said places, shall be incorporated into a company, and chuse wardens yearly. 12 & 13 *W. c.* 4. *s.* 2.

And an assayer shall be elected by the company in each of the said places, who shall be sworn by the mayor. *s.* 4, 5.

Maker to be entred with the wardens of the company.

4. And every goldsmith, silversmith, and plateworker, within the said places, and elsewhere, shall before he takes upon him to exercise the said trade, enter his name, and mark, and place of abode, with the wardens of the company where an assayer is; and if he shall not make such entry, or shall strike any other mark but what is so entred, he shall forfeit double value, half to the king, and half to him that shall sue in any court of record in the county or place where the offence shall be committed. 12 & 13 *W. c.* 4. *s.* 7.

Places of working to be entred.

6. Also they shall give notice in writing at the next office for the duties abovementioned, of their names and places of abode, and where they intend to work; on pain of 20 *l.* 6 *G. c.* 11. *s.* 7.

And all plate, and other manufactures of silver, which shall be found in any private workhouse, and all private utensils for making the same, of which no notice hath been given, shall be forfeited, or the value thereof. 6 *G. c.* 11. *s.* 16.

Officers to enter and take account.

7. The officers for the said duties shall, in the day time, be permitted on request, to enter the workhouse, and take an account of the weight, and shall thereof make return in writing to the commissioners or whom they shall appoint, leaving a copy thereof (if demanded) with the maker; and if any officer shall refuse (after demand in writing, 12 *G. c.* 28. *s.* 30.) to leave such copy, he shall forfeit 40 *s.* 6 *G. c.* 11. *s.* 10.

Obstructing the officer.

8. And if any maker or worker shall obstruct any such officer, in the execution of his duty; he shall forfeit 20 *l.* 6 *G. c.* 11. *s.* 12.

Maker to keep scales and weights.

9. And the maker shall keep scales and weights at the place of working, and permit and assist the officer to make use thereof; on pain of 10 *l.* 6 *G. c.* 11. *s.* 11.

Removing before surveyed.

10. And no maker (on pain of 40 *l.*) shall remove any such plate by him made, of which no account shall have been taken by the officer, without giving him 24 hours notice. 6 *G. c.* 11. *s.* 13.

Concealing.

11. And if the maker shall conceal any plate, to avoid the duties; he shall forfeit 20 *l.* 6 *G. c.* 11. *s.* 15.

Plate not surveyed to be kept separate.

12. And the plate not surveyed shall be kept separate from that which shall have been surveyed, for 24 hours after making; unless

less it shall have been sooner surveyed by the officer; on pain of 10 *l.* 6 *G.* *c.* 11. *s.* 14.

13. And the makers shall once a month make entry in writing upon oath, at the next office for the said duties, of all the silver plate by them wrought within such month, containing the weight and kinds, and how much was made in each week; on pain of 100 *l.* 6 *G.* *c.* 11. *s.* 8. Entry of plate made.

14. And they shall clear off the duty in six weeks after such entry; on pain of double duty. 6 *G.* *c.* 11. *s.* 9. Payment of the duty.

15. And every goldsmith, silversmith, and plateworker, inhabiting where there is not an assayer, shall first fix his mark, and then send it to an assayer; and if it be found by the assayer to be of the fineness of the standard, then he shall mark it, and have 6 *d.* a pound for his trouble: And if any such person shall make any plate (less in fineness than the standard, or put any to sale (except what by reason of its smallness is not capable of the touch) before it shall be assayed and marked; he shall forfeit the same, half to the king, and half to him that shall sue in any court of record in the county or place where the offence shall be committed. 12 & 13 *W.* *c.* 4. *s.* 9. Assaying.

16. And as to the fineness thereof by the standard, it is enacted by the 6 *G.* *c.* 11. that plate may be made, either according to the old standard (of 11 ounces and 2 pennyweights fine silver in every pound troy); or according to the new standard (of 11 ounces and 10 pennyweights): but differently marked. *s.* 41. Fineness by the standard.

17. That is to say, plate of 11 ounces and 2 pennyweights, shall be marked with the maker's mark, *viz.* the first letters of his christian and surname; the mark of the goldsmith's company in *London*, *viz.* the leopard's head, lion passant, and a distinct variable mark to denote the year; (or, with the mark of the worker or maker, and with the mark appointed to be used by the assayers at *York*, *Bristol*, *Chester*, *Norwich*, or *Newcastle upon Tyne*:) Mark.

And plate of 11 ounces and 10 pennyweights shall be marked with the maker's mark, *viz.* the first letters of his christian and surname; and the mark of the said company, *viz.* a lion's head erased, the figure of a woman called *Britannia*, and the said mark or letter to denote the year; (or, with the mark of the worker or maker, and the mark of one of the said cities or towns). 12 *G.* 2. *c.* 26. *s.* 5.

18. And to prevent frauds in the duties abovementioned, the maker shall send with every parcel to the assay office, a note in writing, containing the day and year, his christian and surname, and place of his abode, the several kinds of such plate, and the number of each kind, and the weight; which shall be entred in a book by the officer of the company, and afterwards filed; and the same, or copies thereof, shall be delivered by the officer upon oath monthly into the excise office; and the commissioners shall monthly, or oftner if they think fit, appoint inspectors to examine the books. 12 *G.* 2. *c.* 26. *s.* 9. Account between the assay and excise offices.

19. So

Exportation.

19. So much wrought plate shall be exported yearly as shall be allowed by the commissioners of the customs, or three of them. 9 & 10 *W. c.* 28. *s.* 1.

And the duties shall be drawn back. 6 *G. c.* 11. *s.* 18.

But no drawback shall be allowed for plate above seven years old. 12 *G.* 2. *c.* 26. *s.* 10.

Power of the justices.

20. All the powers of the excise laws shall be in force for managing these duties; and the forfeitures (not otherwise herein directed) shall be sued for, levied, or mitigated as by any law of excise, or in the courts at *Westminster*, and be disposed half to the use of the king, and half to him who shall sue. 6 *G. c.* 11. *s.* 19, 20. 24 *G.* 2. *c.* 40. *s.* 33.

Utensils liable.

21. And all the plate, materials, and utensils in the custody of the maker, or of any person to his use, shall be liable to the duties in arrear, and to the penalties; and such proceedings may be had thereupon, as if such maker were the lawful owner. 6 *G. c.* 11. *s.* 17.

For other regulations concerning plate, not relating to these duties, the reader may consult the statutes at large mentioned under this head; and especially the 12 *G.* 2. *c.* 26.

XII. Salt.

Officers for the salt duties.

1. The duties upon salt shall be under the management of the commissioners of excise. 5 *W. c.* 7. *s.* 5.

Or particular commissioners may be appointed; in which case they shall have the same powers as commissioners of the excise. 1 *An. st.* 1. *c.* 21. *s.* 26.

And all collectors and other officers for ascertaining, collecting, or receiving the duty, shall be appointed under the hands and seals of the said commissioners. 5 *W. c.* 7. *s.* 5.

And no person shall act as chief commissioner until he shall before a baron of the exchequer take the oaths of allegiance, supremacy, and abjuration; and the oath following:

You shall swear to execute your office, truly and faithfully without favour or affection, and shall from time to time account make and deliver to such person and persons as his majesty shall appoint to receive the same; and shall take no fee or reward for the execution of the said office, from any other person than from his majesty, or those whom his majesty shall appoint on that behalf: So help you god. 5 W. c. 7. s. 14.

And no person shall be capable of any office relating to the said duties (other than that of chief commissioner), until he shall before two commissioners, or two justices of the peace where he shall be appointed officer, take the said oaths of allegiance, supremacy, and abjuration, and the said last mentioned oath *mutatis mutandis.* 5 *W. c.* 7. *s.* 15.

British salt imported.

2. By the 2 & 3 *An. c.* 14. No salt of the produce of *Great Britain*, or the *Isle of Man*, shall be imported or landed in *England*;

land; on pain that the ſame ſhall be forfeited, and alſo the ſhip and tackle; and every perſon aſſiſting therein ſhall forfeit 20 *l.* or be impriſoned ſix months. *ſ.* 1. (And by the 5 *G. c.* 18. *ſ.* 23. this is extended to ſalt ſhipped for exportation, and put on ſhore again, or taken out of the veſſel.)

And the ſalt officers may at any time within two months, ſeize the ſalt, ſhip, and tackle; and if the owner ſhall not in 20 days claim the ſame, and give ſecurity to anſwer the value, they ſhall be ſold. *ſ.* 2.

But this ſhall not extend to ſalt ſhipped to be carried coaſtwiſe by certificate. *ſ.* 3.

Alſo, where ſalt entred for exportation, ſhall be forced into any port by weather, enemies, or other neceſſity, the owner or maſter may within 20 days reland the ſalt, ſo as entry be made, and the drawback repaid. *ſ.* 4.

Alſo, where a ſhip ſhall come in from *Ireland*, or any other foreign part, having any ſalt on board, which was taken in only for proviſion of the ſhip; the maſter may land the ſame, ſo as entry be made in ten days, and the duty paid or ſecured as for foreign ſalt imported. *id. ſ.* 6. But if he ſhall not enter and pay, or ſecure the duty in ten days, and before it be landed, the ſame ſhall be forfeited; and the maſter, owner, or importer, ſhall forfeit double value. 5 *G. c.* 18. *ſ.* 18.

3. By the 5 *W. c.* 7. There ſhall be paid for every gallon of foreign ſalt imported, 3 *d.* over and above other duties. *ſ.* 3. Foreign ſalt imported.

And by the 9 & 10 *W. c.* 44. an additional duty is laid, of 7 *d.* a gallon. *ſ.* 3. The ſame amounting in the whole to 6 *s.* 8 *d.* a buſhel. 8 *G. c.* 4.

The gallon to be rated after 8 gallons to the buſhel *Wincheſter* meaſure. 5 *W. c.* 7. *ſ.* 18.

And 84 *lb.* weight of foreign ſalt ſhall be deemed a buſhel. 1 *An. ſt.* 1. *c.* 21. *ſ.* 6

Which ſaid duties ſhall be paid by the importer, on entry, and before landing; yet, on giving ſecurity to the collector, he ſhall have ſix months time for payment: But if he pay ready money, he ſhall have after the rate of 10 *l. per centum per annum* abated. 9 & 10 *W. c.* 44. *ſ.* 6.

And by the 5 *An. c.* 29. If the ſalt imported amounts in the whole to more than 40 buſhels, a further time is allowed for payment of the duties: In order to which, the ſalt ſhall on landing be weighed, cellared, and locked up in the preſence of a ſalt officer, under the cuſtody of the merchant or importer (who is to be at the charge of the cellarage or ſtorehouſe); and the merchant or importer may in preſence of a ſalt officer, and by warrant or permit under his hand and ſeal, have what quantity thereof his occaſions may require, not under 40 buſhels at a time; giving ſecurity for the duty of what quantity he receives, payable in ſix months: and if he ſhall pay ready money, he ſhall have after the rate of 10 *l. per cent. per annum* abated. *ſ.* 1, 3.

But if ſuch foreign ſalt imported, ſhall not on landing be ſecured as aforeſaid, it ſhall be liable to payment of duties, and to ſuch penalties for not paying or ſecuring the ſame, as if this act

had not been made; and no salt so cellared and locked up shall be removed without notice first given to the officer, and without a warrant or permit for conveying it; on pain of forfeiting such salt, and 10 *s.* a bushel, and also 20 *l.* to be recovered of the importer; and the carrier or person removing it, shall be also liable to the penalty of 10 *s.* a bushel, and 20 *l.* for every offence. *s.* 2.

And no foreign salt shall be imported in any ship or vessel of less burden than 40 tuns, and in bulk only (except for the necessary provisions of the ships); on pain of forfeiting the salt and double value thereof, to be recovered of the importer. 3 *G.* 2. *c.* 20. *s.* 18.

Landing salt before payment of the duty.

4. And if any salt be landed before entry made with the salt officer, or before the duty paid, or without a warrant for landing the same signed by the salt officer; it shall be forfeited, or the value, and also 10 *s.* a bushel. 9 & 10 *W.* *c.* 44. *s.* 6. And moreover, every person assisting therein, shall forfeit 100 *l.* 5 *G.* *c.* 18. *s.* 24.

Search on shipboard.

5. And any officer of the salt duties, or customs, may go on board any vessel, to search if there be any salt on board, and may seize the same if it be found in any other vessel than that wherein it was brought into port, unless it had been entred, or the duty paid; and all such salt shall be forfeited, or the value thereof, to be recovered of the master or owner of the vessel, who shall also be liable to all other penalties as if the same had been landed without entry or payment of duties: and every person obstructing such officer, shall forfeit 40 *l.* 5 *G.* *c.* 18. *s.* 22.

Ships hovering near the coast.

6. And where any vessel, laden with salt, shall be found hovering on the coasts, the officers of the customs or salt duties may go on board and compel them to come into port, and may continue on board, till the salt shall be unladen, or the ship depart on her voyage: And if the persons on board such ship, or any other vessel importing salt, shall neglect or refuse to enter, or to unlade such salt, for 20 days after it is come into port, or within that time to depart on their voyage, unless permitted by the chief officer of the customs to stay longer; in such case all the salt on board shall be forfeited, and double value thereof, to be recovered of the master or commander of the vessel. 1 *An.* *st.* 1. *c.* 21. *s.* 7.

Duty on home salt.

7. By the 5 *W.* *c.* 7. a duty is laid on home salt of 1 ½ *d.* a gallon. *s.* 3.

Which by the 7 & 8 *W.* *c.* 31. is explained to extend to all salt made from rock salt, salt refined, or salt made from salt. *s.* 43.

And by the 9 & 10 *W.* *c.* 44. a further duty is imposed on all such salt, of 3 ½ *d.* a gallon. *s.* 5. The same amounting in the whole to 3 *s.* 4 *d.* a bushel.

Note; By the 3 *G.* 2. *c.* 20. These duties were repealed, but were revived by the 5 *G.* 2. *c.* 6. for three years, and so from time to time continued, and at last by the 26 *G.* 2. *c.* 3. made perpetual.

And by the 9 *An.* *c.* 23. A further duty of 9 *s.* a ton, is laid on all rock salt exported to *Ireland.* *s.* 44.

And

And rock ſalt ſhall be aſcertained as to payment of the duties, at 65 pounds weight to the buſhel. 1 *An. ſt.* 1. *c.* 21. *ſ.* 9.

All other ſalt at 56 pounds to the buſhel. 9 & 10 *W.* *c.* 44. *ſ.* 34.

Drawback on rock ſalt refined.

8. Where any rock ſalt for which the duties ſhall have been paid or ſecured, ſhall be melted and refined; the perſon who ſhall refine it into white ſalt, ſhall have an abatement out of the duty of the ſaid white ſalt, of ſo much as was charged on the ſaid rock ſo melted and refined; ſo as the rock ſo refined were before the melting thereof weighed in preſence of the officer; and ſo as oath be firſt made before a juſtice near adjoining, of the particular quantity of rock ſalt by ſuch refiner employed in making the ſaid white ſalt, and that he or any other perſon by his privity did not increaſe the ſaid rock ſalt by mixing or other undue practice, and that no former allowance for the ſaid rock ſalt had been made to his uſe; and ſo as due proof be made upon oath or otherwiſe, that the duties for the ſaid rock ſalt ſo refined were paid or ſecured. 10 & 11 *W.* *c.* 22. *ſ.* 6.

And no rock ſalt ſhall be refined or made into white ſalt in any place except within ten miles of the pit, or at ſuch places as were uſed for refining rock ſalt before *May* 10, 1702. on pain of 40*s.* a buſhel. 1 *An. ſt.* 1. *c.* 21. *ſ.* 10.

Entry of ſalt works and pits.

9. Every maker of ſalt, refiner of rock ſalt, and proprietor of any ſalt works or pits, who ſhall ſet up or uſe any ſalt work, ſalt pit, ſalt pan, ſtorehouſe, warehouſe, or other place, for the making, laying, refining, or keeping of ſalt or rock ſalt, without giving notice thereof at the next ſalt office; ſhall forfeit 40*l.* 1 *An. ſt.* 1. *c.* 21. *ſ.* 1.

Officer to enter and ſurvey.

10. And if any ſalt maker, importer of ſalt, or refiner or proprietor of rock ſalt, ſhall on requeſt or demand made, in the day time, or in the night in preſence of a conſtable, refuſe to permit the officer to enter and come into his works, warehouſe, ſtorehouſe, or other place for making, laying, refining, or keeping of ſalt; he ſhall forfeit 40*l.* 1 *An. ſt.* 1. *c.* 21. *ſ.* 2.

Obſtructing the officer.

11. And, generally, if any perſon ſhall obſtruct any officer in the execution of his office, or of the powers given him by any law relating to the ſalt duties; he ſhall forfeit 20*l.* and for non-payment, and in default of diſtreſs, he may be committed to the houſe of correction, to be whipt and kept to hard labour for any time not exceeding one month. 1 *An. ſt.* 1. *c.* 21. *ſ.* 4.

Removing ſalt without notice.

12. No ſalt ſhall be delivered from any ſalt works or pits, without notice firſt given to the officer; on pain of forfeiture of the ſalt ſo delivered, and of 20*l.* by the owner of the works or pits. 5 *W.* *c.* 7. *ſ.* 19.

And by the 9 & 10 *W.* *c.* 44. No ſalt ſhall be delivered from any ſalt works or pits, without notice given to the officer; on pain of the owner forfeiting the ſame, and 10*s.* a buſhel. *ſ.* 26.

Scales and weights.

13. The collector ſhall provide at every ſalt work or pit, a ſufficient beam, ſcales, and weights, or ſtilyard, and ſhall have liberty to fix the ſame, for weighing the ſalt that ſhall be delivered from thence; and one or more perſons living near, ſhall be admitted and ſworn to the true weighing of ſuch ſalt, before one juſtice

near

near adjoining, without fee; and he shall be paid by the collector or officer for the duties. 7 & 8 *W. c.* 31. *s.* 46.

Weighing.

14. Every owner of any rock pit, who shall take any rock salt out of such pit, shall before the removal thereof, cause the same to be weighed in the presence of the salt officer, who shall attend at all reasonable hours in the day time to see it weighed, and take an account and make return thereof in writing under his hand to the commissioners of excise, or whom they shall appoint, leaving a true copy under his hand with the proprietor: and if the proprietor refuse to weigh it in presence of the officer when taken out of the pit, or suffer any rock salt to be removed from the pit before it hath been weighed; he shall forfeit 20*l.* and double value. 10 & 11 *W. c.* 22. *s.* 3.

Entry of salt made.

15. All makers and proprietors of salt shall make entries with the salt officers of the quantity by them made and delivered, or imported; and shall have a warrant under the hand and seal of an officer, impowering them to carry away the same, before it shall be removed, which warrant the officer shall give on paying or securing the duties (in nine months, 5 *An. c.* 29. *s.* 5.): But if any person at the time of entry shall pay ready money, he shall have after the rate of ten *per centum per annum* allowed. 5 *W. c.* 7. *s.* 6.

Payment of the duties.

16. And the proprietor of rock pits shall clear off the duties of all rock salt, in two days after the charge made by the officer, or within the said two days give security to pay the same (in twelve months, 5 *An. c.* 29. *s.* 5.); on pain of double value of the duties: But if he shall pay within the two days, he shall be allowed after the rate of 10*l. per centum per annum*, for the said twelve months. 10 & 11 *W. c.* 22. *s.* 4, 5.

Discount on payment.

17. And persons giving security for payment of the duties, may at any time within 28 days after giving the same, pay the duty, and shall have a discount after 10*l. per centum per annum* for the remainder of the time. 1 *An. st.* 1. *c.* 21. *s.* 29.

How far rock salt may be removed, with the duty unpaid.

18. But the owners of rock salt, may remove it out of the pits, or warehouses adjoining or belonging to such pits, into their other warehouses or places for storing thereof, for convenience of selling or shipping, after entry made, and a warrant taken for the same from the next officer; and shall not be obliged to pay or secure the duty on such removal, 5 *W. c.* 7. *s.* 22.

Salt carried without a permit.

19. The officers may seize all salt carried before entry, without a permit, and the same shall be brought to the next office; and if it shall not be claimed by the owner or one deputed under his hand, in ten days, it shall be forfeited and sold the next general day of sale: And if it be claimed in ten days, and the claimer doth not make it appear by the oath of one witness that it had been duly entred, and a warrant obtained for removing it, it shall likewise be forfeited: And every person who shall carry or cause it to be carried before such entry and warrant, shall forfeit double the value. 5 *W. c.* 7. *s.* 7. And also 10*s.* a bushel. 9 & 10 *W. c.* 44. *s.* 12.

And by the 1 *An. st.* 1. *c.* 21. If any salt carrier, or other person, shall remove any salt from any salt works, or place thereunto belonging,

belonging, without entry and payment of the duties or securing the same, or without a permit; the officers may not only seize the salt, but also apprehend the offender, and if he shall not on conviction pay the penalties, and no sufficient distress can be found, he may be committed to the house of correction to be whipt and kept to hard labour for any time not exceeding one month. *s.* 4.

And by the 2 & 3 *An. c.* 14. The carrier, who shall carry any salt without a permit, shall forfeit 20 *l.* *s.* 8.

Salt found unentred.

20. And every person in whose possession any salt shall be found, near the salt works or sea coasts, which hath not been entred, and the duty paid or secured; shall if it be foreign salt, be liable to such penalties as if he had landed the same without entry or payment of duties; and if it be *English* salt, he shall be liable to such penalties, as if he had removed it from the salt works without entry or payment of duties, and without a permit; unless he shall make it appear, that he bought it of a maker, retailer, or importer of salt, and of whom. 1 *An. st.* 1. *c.* 21. *s.* 3.

Several permits to be delivered with several parcels.

21. The salt officer shall deliver *gratis* and without delay, so many several permits to each carrier of salt, as he shall demand for such several horse loads of salt as he shall load at one time, and at one salt work. 7 & 8 *W. c.* 31. *s.* 47.

Prices of salt.

22. The lord mayor and aldermen in *London*, and the justices of the peace in the country at their general sessions, may set and publish in writing the prices of salt, and alter the same as there shall be occasion: and persons refusing to sell at such price, or selling at a higher price, shall forfeit 5 *l.* half to the king, and half to the informer, by distress, by warrant of the lord mayor or any such justice; and in default of sufficient distress, to be imprisoned till paid. 7 & 8 *W. c.* 31. *s.* 92.

Salt to be sold by weight.

23. By the 9 & 10 *W. c.* 6. No person dealing in salt, shall *sell* it otherwise than by weight, after the rate of 56 pounds to the bushel; on pain of 5 *l.* to the informer; to be determined by two justices residing near: And the party grieved may appeal to the next sessions. And the said justices shall on complaint summon the party accused, and on appearance or contempt examine the matter, and on proof by the oath of two witnesses, or confession, give judgment, and shall issue their warrant to levy the same by distress, and cause sale thereof to be made, if not redeemed in six days, rendring the overplus, and for want of sufficient distress, shall imprison the offender till satisfaction is made.

And no person shall *buy* salt otherwise than by weight, and not by measure; on pain of 10*s.* a bushel, and so proportionably. 1 *An. st.* 1. *c.* 21. *s.* 28.

Carrying coastwise.

24. No retailer or shopkeeper shall ship any salt to be sent to any port within the kingdom, before he hath made it appear by oath or otherwise, before the commissioners or a salt officer, that the duty is paid or secured, or that it was bought of some other retailer or shopkeeper that hath paid the duty. 5 *W. c.* 7. *s.* 8.

And all salt to be put on shipboard, shall be weighed at the place where taken on board; and none shall be carried on board before it is weighed, and a permit containing the quantity is obtained; on pain of forfeiture, and 10*s.* a bushel. But if the officer shall

not attend to weigh it, or refuse to give a permit, it may be carried on board without incurring any penalty. 10 & 11 *W. c.* 22. *s.* 10, 11.

And where any salt shall be laid on shipboard, the officer of the customs where it shall be laden, shall in the cocquet (which cocquet shall be also signed by the salt officer) express the quantity: And if such ship shall come into any port, the officers of the customs or of the salt duties, may go on board and demand a sight of the cocquet, and if any such officer shall have just cause to suspect, that there is not so much salt on board as the quantity expressed in the cocquet, and shall make affidavit thereof, before the collector or customer of the port, or person executing either of their offices; he may weigh all the salt on board; and if there shall not be so much as the cocquet expresseth (making allowance for waste) the salt remaining shall be forfeited. 1 *An. st.* 1. *c.* 21. *s.* 13.

And persons shipping salt to be carried coastwise, the duties for which have been paid or secured, shall have an allowance for waste after the rate of three bushels for every 40 bushels of white salt, and after the rate of a bushel and an half for every 40 bushels of rock salt; which allowance shall be made but once for the same salt, altho' it be carried from several ports coastwise. 5 *An. c.* 29. *s.* 4. 6 *An. c.* 12. *s.* 1.

And every commander of any vessel that shall carry salt from one port to another within the kingdom, shall (before he hath a warrant for landing it) deliver to the salt officers in the port of landing, a true particular of the quantity, signed by the salt and customhouse officers of the port from whence he came; and then the master, mate, or boatswain, shall make oath before some of the commissioners or their officers, that to his knowledge there hath not been laid on board any salt since he came from such port. And if the vessel be to deliver one part of the salt at one port, and another part at another port, then the officers for the salt and customs, where part of the salt shall be delivered, shall certify on the back of the warrant, or by certificate alone, under their hands and seals, how much of the salt hath been there landed; on pain of forfeiting double the value of the salt that shall be otherwise delivered. 5 *W. c.* 7. *s.* 9. And likewise 10*s.* a bushel. 9 & 10 *W. c.* 44. *s.* 12.

And the officer at the unlading port may go on board the ship, and demand a sight of the permit, and weigh the salt upon unlading; and if it be more in weight than is contained in the permit, the surplusage shall be forfeited. And if the master of the ship shall refuse to shew the permit, the officer may seize and detain the salt till it be produced. And if he do not produce it in four days after seizure, the salt shall be forfeited. 10 & 11 *W. c.* 22. *s.* 12, 13.

On reshipping any salt from any boat, barge. or other vessel, and before any dispatches be granted for the salt so reshipped, the master, mate, or chief boatman, shall make oath before the salt officer, that all the salt taken in at the place of lading is reshipped on board such vessel, and that no salt hath been added to it or taken from it, to the best of his knowledge and belief; on pain

of

of forfeiting double the value of the ſalt that ſhall be otherwiſe reſhipped, and likewiſe 10*s.* a buſhel. 5 *G. c.* 18. *ſ.* 25.

And where any ſubject hath ſhipped ſalt that hath paid duty, in order to be conveyed to ſome part of *England*, and any of it is loſt at ſea (or in any port, harbour, or river, 8 *G. c.* 4. *ſ.* 11.) by ſtorm, or being thrown overboard for preſerving mens lives or the veſſel (or by ſinking of the ſhip, or be taken by enemies, 9 & 10 *W. c.* 44. 2 & 3 *An. c.* 14.); in ſuch caſe, the merchant or owner of the ſalt ſhall, on proof made by the oaths of two witneſſes, whereof the maſter or mate ſhall be one, at the quarter ſeſſions where he ſhall inhabit, of the loſs of ſuch ſalt, and that the ſame was not occaſioned by any leakage of the ſhip, or any negligence or default of the maſter or mariners, receive from the ſaid ſeſſions a certificate that ſuch proof was made before them; and on producing the certificate to the ſalt officer he ſhall let him buy the like quantity duty free. 2 & 3 *An. c.* 14. *ſ.* 18. Which certificate ſhall alſo vacate the ſecurity given for payment of the duties. 26 *G.* 2. *c.* 32. *ſ.* 6.

25. When any ſalt ſhall be entred to be put on board, and the duty paid or ſecured; the officer ſhall, on due notice, by himſelf, or deputy, between ſun riſing and ſetting, attend the weighing it out, without loſs of time; on pain of 40*s.* 9 & 10 *W. c.* 6. *ſ.* 3. Exportation.

And the ſalt officers may go aboard all ſhips exporting ſalt, and continue, and take an account thereof; and if any perſon ſhall obſtruct any ſuch officer, he ſhall forfeit 20*l.* 1 *An. ſt.* 1. *c.* 21. *ſ.* 15.

And there ſhall be a drawback of the duties on ſalt exported. 5 *W. c.* 7. *ſ.* 11. 10 & 11 *W. c.* 22. *ſ.* 7. 5 *An. c.* 29. *ſ.* 16.

Moreover there ſhall be an allowance of 4 buſhels for every 40 buſhels of white ſalt, and of two for every 40 buſhels of rock ſalt, exported to *Ireland*; for the waſte in carriage. 5 *An. c.* 29. *ſ.* 14.

And if any ſalt, for which the duty hath been repaid on exportation, ſhall be landed again before the duty be again paid, and entry made, and other things performed, as in caſe of foreign ſalt imported; the offender ſhall forfeit double value, and 10*s.* a buſhel, and the other penalties for foreign ſalt landed unentred. 9 & 10 *W. c.* 44. *ſ.* 27. 5 *W. c.* 7. *ſ.* 20.

And if any ſhip laden with ſalt exported, ſhall by ſtreſs of weather or otherwiſe be drove into any port, the ſalt officer may come on board, and continue till the ſhip ſhall unlade her cargo, or return to ſea; on pain of 20*l.* to be recovered of the maſter who ſhall refuſe the officer to come or continue on board. And if any part of the ſalt ſhall be put on ſhore, without entry or repayment of the duty; the ſaid ſalt, and alſo the whole cargo of ſalt in the ſhip, ſhall be forfeited. 1 *An. ſt.* 1. *c.* 21. *ſ.* 12.

And where any ſalt, for which the duties ſhall have been paid or ſecured, ſhall be ſhipped in order to be exported, and the ſame ſhall periſh by ſinking of the ſhip in the port, before the exporter ſhall be intitled to a drawback; the exporter or proprietor ſhall on proof made at the next ſeſſions, to be held next to the place where it ſhall ſo periſh, of the loſs of ſuch ſalt, receive from the

ſaid ſeſſions a certificate, that ſuch proof was made before them; and on producing the certificate to the collector of the ſalt duties, he ſhall let ſuch perſon buy the like quantity duty free. 2 & 3 *An. c.* 14. *ſ.* 10.

And where any ſalt ſhall be ſhipped in order for exportation to *Ireland*, and it ſhall periſh by ſinking of the ſhip, or be taken by enemies; the exporter or proprietor ſhall on proof made at the quarter ſeſſions for the place from whence it was exported, of the loſs of ſuch ſalt, receive from the ſaid ſeſſions a certificate, that ſuch proof was made before them; and on producing the certificate to the officer of the place where the duty hath been paid or ſecured, the ſecurity ſhall be diſcharged, and the money repaid. 4 *An. c.* 12. *ſ.* 11. 9 *An. c.* 23. *ſ.* 46. Proof to be made in two years. 26 *G.* 2. *c.* 32. *ſ.* 7.

Salt for curing of fiſh.

26. The curers of fiſh for exportation may import foreign ſalt, or take from the pit or work *Britiſh* ſalt (or rock ſalt refined, 8 *G. c.* 16. *ſ.* 6.) for curing fiſh for exportation, without duty, except the cuſtoms on importation; ſuch foreign ſalt being landed, and ſuch *Britiſh* ſalt being taken from the pits or works, and weighed, in the preſence of an officer, and being lodged in a warehouſe, under a lock both of the officer and proprietor; which ſhall remain there during the ſeveral intervals of the fiſhing ſeaſon. 5 *G. c.* 18. *ſ.* 1.

And any perſon who ſhall imbezil any foreign ſalt after importation, and before cellaring, ſhall forfeit 20 *s.* a buſhel; and any perſon who ſhall imbezil any *Britiſh* ſalt, after weighing at the pits or works, and before cellaring, ſhall forfeit 10 *s.* a buſhel. 5 *G. c.* 18. *ſ.* 4.

The proprietor ſhall enter at the next office the quantity ſo by him lodged; and the officer ſhall keep an account of the quantity in his cuſtody. 5 *G. c.* 18. *ſ.* 1.

And at the beginning of the fiſhing ſeaſon, the proprietor or his agent ſhall make oath in writing before an officer at the next office, declaring the quantity ſo lodged, and that it is all intended for curing of fiſh for exportation only, and ſhall not by his conſent be delivered but for the ſaid purpoſe: after which oath ſo made and filed, the officer in whoſe cuſtody the ſalt hath continued during the interval of the fiſhing ſeaſon, ſhall deliver all the ſaid ſalt into the ſole cuſtody of the proprietor. 5 *G. c.* 18. *ſ.* 1.

And in the caſe of herrings to be cured for exportation, it is enacted by the 8 *G. c.* 4. and 8 *G. c.* 16. that the proprietor of ſuch ſalt delivered duty free, or his agent, ſhall inſtead of the ſaid oath, make oath in writing at the next ſalt office, declaring the quantity of the foreign or *Britiſh* ſalt reſpectively lodged for curing of fiſh, and that it is intended for the curing of fiſh for exportation only, and ſhall not by his conſent be delivered but for that purpoſe, except ſo much thereof as ſhall be uſed for curing ſuch red or white herrings as ſhall be entered for home conſumption, and charged with the duties by the ſaid acts reſpectively chargeable thereupon.

And

And no foreign ſalt ſhall be delivered over from the joint cuſtody of the officer and proprietor, into the ſole cuſtody of the proprietor or his agent; for curing fiſh for exportation; except he give ſecurity to the ſatisfaction of the chief officer of the ſalt duty in the port, that he will account for the foreign ſalt ſo by him received, or anſwer the penalties. 8 *G.* 2. *c.* 12. *ſ.* 3.

And for every buſhel of ſalt ſo lodged, which ſhall be either carried away, or found wanting at the redelivering thereof into the ſole cuſtody of the proprietor, reaſonable allowance for waſte being firſt made; the proprietor ſhall forfeit 20*s.* 5 *G.* *c.* 18. *ſ* 3.

And at the end of every fiſhing ſeaſon, the officer ſhall take an account of the quantity remaining in hand which ſhall be locked up as aforeſaid: and the proprietor ſhall (within three months after the expiration of each year, 8 *G.* *c.* 4. *ſ.* 10.) deliver an account in writing into the office, containing the quantity of fiſh exported or entered for exportation, on which the ſalt hath been uſed; together with a certificate from the officer where it is ſhipped for exportation, verifying the account; which account ſhall be alſo affirmed by the oath of the proprietor or his agent, and remain in the office; and if any of the ſalt ſhall be delivered over to any other perſon, and uſed by him in curing of fiſh, that alſo ſhall be expreſſed in the account, and ſuch perſon ſhall in like manner make another account of all the ſalt uſed by him: And if any ſuch perſon ſhall neglect or refuſe to deliver ſuch account within the ſaid time; he ſhall forfeit 40*l.* 5 *G.* *c.* 18. *ſ.* 1.

And if the proprietor of ſuch ſalt ſo delivered over, ſhall not make it appear by oath or otherwiſe to the proper officer, that ſuch ſalt ſo delivered over was uſed for curing of fiſh; he ſhall be deemed guilty of imbezilling it, and forfeit 50*l.* 11 *G.* *c.* 30. *ſ.* 41.

Alſo the ſaid account ſhall expreſs the quantity of red or white herrings entred for home conſumption, on which ſuch ſalt hath been uſed. 8 *G.* *c.* 4. *ſ.* 3. 8 *G.* *c.* 16. *ſ.* 3.

And for every buſhel of ſalt, ſo taken out of the cellar or ſalt works, which ſhall not be ſo accounted for by ſuch oath and certificate; or by certificate from the quarter ſeſſions, that proof was there made, that ſuch ſalt was put on board for curing fiſh at ſea, and was there taken by enemies, or otherwiſe loſt at ſea; or ſhall not be returned into, or found remaining in the cellar or warehouſe: the owner or other perſon ſtanding accountable for the ſame, ſhall forfeit 20*s.* And the proprietor or his agent ſelling, giving away, uſing, or delivering any ſuch ſalt otherwiſe than for the purpoſes aforeſaid; ſhall forfeit 20*s.* a buſhel: And every perſon buying or receiving the ſame, ſhall forfeit alſo 20*s.* a buſhel: And in default of payment in 14 days after conviction, and where no ſufficient effects can be found to anſwer the ſame, he ſhall be ſent to the houſe of correction, to be whipped and kept to hard labour, not exceeding three months. 5 *G.* *c.* 18. *ſ.* 2.

For every caſk of pilchards or ſcads exported, containing 50 gallons, ſhall be paid by the ſalt officer an allowance of 7*s.* for every hundred of codfiſh, ling, or hake (except dried ones called haberdines) of 14 inches long, from the bone in the fin to the

third joint in the tail, 5 *s.* for every barrel of wet codfish, ling, or hake, of 32 gallons, 2 *s.* for every hundred weight of haberdines 3 *s.* for every barrel of salmon of 42 gallons, 4 *s.* 6 *d.* for every barrel of white herrings 2 *s.* 8 *d.* for every barrel of full red herrings 1 *s.* 9 *d.* for every barrel of clean shotten red herrings 1 *s.* for every last of dried red sprats 1 *s.* And the officers shall cut off part of the tail of the codfish, ling, and hake; and mark the casks of the other fish; that it may be known that they have once had the allowance. 5 *G. c.* 18. *s.* 6.

And the maker or curer of red herrings, before he remove them (except for exportation) from the place of curing, shall make entry thereof at the next salt office, and pay 1 *s.* 8 *d.* a thousand. And if they be packed up in casks, the number shall be marked on the head; and a permit shall be given by the salt officer, expressing the number, and the mark and number of the casks, and for what place they are intended, and whether to be sent by land or water; on pain of forfeiting all the red herrings removed otherwise, and also 40 *s.* a thousand. 8 *G. c.* 4. *s.* 2. And as the duties on salt shall rise or fall, the 1 *s.* 8 *d.* a thousand shall rise and fall proportionably. *s.* 5.

And the maker or curer of white herrings, before he remove them (except for exportation) from the place of curing, shall make entry thereof at the next salt office, and pay 3 *s.* 4 *d.* a barrel; and the cask shall be marked on the head, shewing the contents: then a permit shall be given by the salt officer, expressing the quantity, and mark and number of the casks, and for what place they are intended, and whether to be sent by land or water; on pain of forfeiting all the white herrings removed otherwise, with the casks, and also 40 *s.* a cask. 8 *G. c.* 16. *s.* 2.

And the officers at all times in the day, or in the night in presence of a constable, may enter into the cellars and warehouses, and inspect the curing of the fish, and gage the salt, and mark the casks, and see them exported; and if any person shall obstruct them, he shall forfeit 20 *l.* 5 *G. c.* 18. *s.* 7.

No herrings, pilchards, scads, codfish, ling, hake, salmon, or dried red sprats, shall after they be put on board any boat or vessel, in order to be exported, be taken out thereof, otherwise than to put the fish into the ships in which they are to be exported, nor put on shore but in presence of a salt officer; on pain that the same shall be forfeited, and also the ship and tackle; and every person assisting therein, shall forfeit 20 *l.* or be imprisoned six months. 5 *G. c.* 18. *s.* 23. 2 & 3 *An. c.* 14. *s.* 13.

If the said fish shall not be exported, for want of an opportunity, while they are good and merchantable; the owner may cause them to be destroyed in the presence of an officer: and the officer's certificate that they were destroyed, shall be admitted to verify the account. 8 *G. c.* 4. *s.* 4.

No person shall cure or pack pilchards for sale, unless he be owner or part owner of a seyn or drift net, or have the consent of such owner in writing, and that on each cask or hogshead the word *seyn* or *drift* shall be burnt with an iron, together with the name

name and surname of the owner, and the number of pilchards; on pain of double value. 1 *An. st.* 1. *c.* 21. *s.* 31.

27. For every barrel of salted beef or pork exported for sale, there shall be allowed 5 *s.* a barrel; to be paid by the salt officer in 30 days after demand, on a debenture to be prepared by the collector of the customs, and verified by the searcher as to the quantity, and that it is good and merchantable: and the oath of the exporter or agent shall be first taken before the principal officers of the port, that it was salted with salt for which the duties have been paid and not drawn back, and that it is really exported for sale, and that no part thereof was spent nor intended to be spent for the ship's use, and not intended to be relanded; and the salt officers, on exportation of beef or pork, may mark the barrel or vessel, that it may be known to have been exported. 5 *An.* *c.* 29. *s.* 8. Salt for curing of beef and pork.

And if any such beef or pork shall be relanded, it shall be forfeited, and also 40 *s.* a barrel; to be recovered of the importer or proprietor. *s.* 9.

28. No person shall use any brine before it is boiled into salt, or any rock salt before it is refined into white salt, for pickling or curing of flesh or fish, or preserving any provisions; on pain of 40 *s.* for every gallon of brine, or pound of rock salt. 1 *An.* *st.* 1. *c.* 21. *s.* 5. Using brine or rock salt instead of salt.

And every person who shall carry any brine from the salt pits (other than the known proprietors of pans for boiling it into white salt) shall likewise forfeit 40 *s.* a gallon. 5 *G.* *c.* 18. *s.* 17.

29. All penalties and forfeitures given by any act relating to the duties upon salt (except where it is herein otherwise directed) shall be employed half to the use of the king, and half to him who shall seize or inform; to be recovered in such manner, and with such power of mitigation, as any forfeiture may be by any law of excise; or in the courts at *Westminster*. And every such officer may seize all salt and other things, which by any law relating to the duties on salt are declared to be forfeited. 5 *G.* *c.* 18. *s.* 26. 24 *G.* 2. *c.* 40. *s.* 33. Power of the justices.

30. And if any person is aggrieved by any order of two justices relating to the duties upon salt, or to any forfeiture or offence concerning the same; he may appeal to the next quarter sessions. 10 & 11 *W.* *c.* 22. *s.* 9. Appeal.

31. But no dealer in salt shall act as a justice of the peace in any matter relating to the duties upon salt; and if there shall not be a sufficient number of justices in any corporation, not dealers in salt, the justices of the county shall have power to act therein. 1 *An.* *st.* 1. *c.* 21. *s.* 18. Dealer in salt not to act as a justice.

XIII. Soap.

1. By the 10 *An.* *c.* 19. and 12 *An.* *st.* 2. *c.* 9. There shall be paid for all soap imported (over and above former duties) 3 *d.* a pound; which shall be under the management of the commissioners of the customs. Duty on soap imported.

Duty on soap made in the kingdom.

2. And by the said acts, there shall be paid for all soap made within the kingdom, 1 *d.* ½ a pound.

Officers for the duties on soap.

3. And the commissioners of the treasury shall appoint commissioners for the duty on soap made in the kingdom; who shall substitute inferior officers. 10 *An. c.* 19. *s.* 5.

Place of making to be entred.

4. And no maker of soap shall set up, alter, or use any boiling house, workhouse, warehouse, storehouse, shop, room, or other place for the making or keeping of soap, or for the boiling or keeping any oil, tallow, pot-ash, lime, or other materials proper to be made into soap; or use any copper, kettle, furnace, fat, cistern, trough, or other vessel for the boiling or making of soap, without first giving notice thereof in writing, at the next office for the said duties; on pain of 50 *l.* 10 *An. c.* 19. *s.* 6.

And all soap, oil, tallow, and other materials, which shall be found in any private boiling house, workhouse, warehouse, or other place, and all private coppers, kettles, furnaces, troughs, and other vessels, for which no entry shall be made, or notice given, shall be forfeited, or the value thereof. 10 *An. c.* 19. *s.* 19.

Officer to enter and survey.

5. The officer shall at all times, by day or night, and if in the night then in presence of a constable, be permitted on request to enter the house, boiling house, warehouse, or other place, used by any maker of soap; and by gaging, weighing, or otherwise, take an account of the quantity, and thereof make return in writing to the commissioners or whom they shall appoint, leaving a true copy, if demanded, under his hand with the maker; and if he shall refuse or neglect to leave such copy (after demand in writing, 12 *G. c.* 28. *s.* 30.) he shall forfeit 40 *s.* 10 *An. c.* 19. *s.* 12.

And if any maker shall obstruct the officer, he shall forfeit 20 *l.* *s.* 15.

Notice of the time of working.

6. Every maker of soap, before he begin any making, if within the bills of mortality, shall give 12 hours, if elsewhere, 24 hours notice in writing to the officer, of the time and hour when he intends to begin; on pain of 50 *l.* 11 *G. c.* 30. *s.* 33.

And putting lees or lye into the copper or other utensil, shall be deemed a beginning such making, so as to subject him to the forfeiture. *s.* 34.

And if the making shall not begin in six hours after the time mentioned in the notice within the bills, and in 12 hours elsewhere; the notice shall be void. *s.* 35.

Reworking stale soap.

7. If any stale or rotten soap, or cuttings, be put into the copper or pan, in presence of an officer, to be refreshed or new made; the officer shall make allowance of the duty, and certify the same upon his report. 10 *Ann. c.* 19. *s.* 28.

But if it shall be put into any making of soap, without giving to the officer 12 hours notice in writing within the bills, and 24 hours elsewhere; there shall be no allowance made for it. 11 *G. c.* 30. *s.* 37.

And if any officer shall falsly pretend that he had such notice when he had not, and make and certify such allowance; he, and also the maker, shall forfeit 10 *s.* for every pound so certified. *s.* 38.

8. And

8. And the maker shall keep scales and weights where he makes his soap, and permit and assist the officer to use them; on pain of 10*l.* 10 *An. c.* 19. *s.* 13. Scales and weights.

9. And the officer shall be permitted to take an account of the quantities of oil, tallow, pot-ashes, lime, and other materials proper to be made into soap, that shall be in the maker's possession; and if the officer shall miss any quantity of them, which he had taken account of the last time he was there, and shall not on reasonable demand receive satisfaction what is become of them, the officer may charge him with such quantity of soap, as such materials in his judgment would have made, not exceeding 14 gallons of such ingredients (besides the lees) for every barrel. 10 *An. c.* 19. *s.* 14. Officer to charge for materials missing.

10. And no maker shall (on pain of 20*l.*) remove any soap, of which no account hath been taken by the officer, from where it was made, without giving the officer within the bills 24 hours notice, and in other parts two days notice, of his intention to remove the same. 10 *An. c.* 19. *s.* 16. Removing soap unsurveyed.

11. And the makers shall keep all the soap by them made, and not surveyed, separate from that which hath been surveyed, for 24 hours after making, within the bills, or two days in any other place; unless it shall have been sooner surveyed; on pain of 5*l.* 10 *An. c.* 19. *s.* 17. Unsurveyed to be kept separate.

12. And if any maker shall conceal any soap or materials; he shall forfeit the same, and also 500*l.* 1 *G. st.* 2. *c.* 36. *s.* 14, 15. Concealing.

And by the 23 *G.* 2. *c.* 21. If any officer of the excise shall have cause to suspect, that any soap is fraudulently concealed, if it is within the bills, then on oath made by such officer before two commissioners, or if it is elsewhere, then upon oath before any justice of the peace, setting forth the ground of his suspicion, they or he may impower such officer by day or night by special warrant (but if in the night, then in presence of a constable) to enter into the places suspected, and seize and carry away the same, as forfeited, together with the package; and if any person shall obstruct such officer, he shall forfeit 100*l.* *s.* 34.

13. The maker within the bills shall monthly, and elsewhere every six weeks, make entry in writing at the next office, of all the soap by him made within the said month or six weeks, setting forth the weight, and what quantity was made at each boiling in the several weeks; on pain of 50*l.* Which entries shall be on the oath of the maker, or chief workman, according to the best of his knowledge and belief. The said entry and oath within the bills, to be at the general office, and elsewhere with the collector and supervisor. 10 *An. c.* 19. *s.* 9. Entry of soap made.

But no maker shall be obliged to send further to make entry, than to the next market town. *s.* 10.

14. And the measure of soap shall be this; Every barrel shall contain 256 *lb. averdupois*; half barrel 128; firkin 64; half firkin 32; besides the weight or tare of the cask. And all soap (except hard cake soap, and ball soap, 10 *An. c.* 26. *s.* 111.) shall upon making thereof be put by the maker into such cask, and none other. 10 *An. c.* 19. *s.* 8. Measure of soap.

And

And all soft soap that shall be filled in any other cask less than barrels, half barrels, firkins, and half firkins, shall be forfeited, and also 5 *l.* 12 *An. st.* 2. *c.* 9. *s.* 19.

Payment of the duties.

15. The maker within the bills, shall within four weeks, and elsewhere within six weeks after entry, clear off the duties; on pain of double duty: And no maker, after such default in payment, shall sell or deliver out any soap, till he hath paid off his duty; on pain of double value. 10 *An. c.* 19. *s.* 11.

Drawback for soap used in the woollen manufacture.

16. Any person who shall use soap in making of cloths, or other manufactures of sheeps or lambs wool only, or manufactures, whereof the greatest part of the value of the materials shall be wool; or in finishing the said manufactures; or preparing the wool for the same; or in whitening of new linen in the piece, (or his chief workman) —— may make proof in writing by affidavit, before the collector or supervisor, specifying the kinds and quantity of the manufactures, and the days between which, and the places where the same were made, prepared, or whitened, and the quantity and kind of soap consumed therein, and that no allowance for the duty on such soap hath been made: whereupon the collector shall repay the duty on such soap. 12 *An. st.* 2. *c.* 9. *s.* 16.

And the said affidavit need not be stamped; and no fee shall be taken, except 4 *d.* for writing the affidavit, on pain of treble damages to the party grieved, with full costs; to be recovered as the other penalties. *s.* 17.

And any person making false affidavit, shall forfeit treble value of the allowance; and for the second offence (on conviction in the courts at *Westminster*) shall suffer as for wilful perjury. *s.* 18.

Soap carried coastwise.

17. Cocquets granted for shipping soap, to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if shipped without such cocquet, the same shall be forfeited, and seized, together with the package. 23 *G.* 2. *c.* 21. *s.* 29.

Importation and exportation.

18. No soap shall be imported, otherwise than in some package, containing at least 224 pounds of neat soap, and stowed openly in the hold; on pain of being seized and forfeited, together with the package, and the master of the vessel to forfeit 50 *l.* 23 *G.* 2. *c.* 21. *s.* 27.

But on information brought against any such master, he may detain the wages of the mariners, till it be determined; and if it shall appear, that the soap was put on board by any mariner without the master's knowledge, the master may apply the wages of such mariner, in payment of the forfeiture. 26 *G.* 2. *c.* 32. *s.* 8.

And the officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all soap forfeited, together with the package; and they may likewise seize such as before entry and payment of duties, shall be found unshipping or unshipped. 23 *G.* 2. *c.* 21. *s.* 28.

Soap that hath paid the duty may be exported; and the duties shall be drawn back. 10 *An. c.* 19. *s.* 22, 23, 24. But no drawback

back shall be allowed on the exportation of any foreign soap imported. 23 *G.* 2. *c.* 21. *s.* 36.

The officers of excise or customs may seize any soap with the package, that shall be found in any vessel, cart, or other carriage; where they shall have good reason to believe that the same was made in some private workhouse, or clandestinely imported without payment of duty, or that the same has been exported and relanded after repayment of the duty; and if the party in whose possession the same shall be found, shall not at the hearing of the information, make it appear that the duty hath been paid or secured, he shall forfeit 5 *l.* for every 100 pounds weight; and also the goods and package shall be forfeited. 23 *G.* 2. *c.* 21. *s.* 31.

And if any person shall knowingly harbour or conceal any soap unlawfully imported, or relanded after shipping for exportation upon debenture; he shall, whether he claims any property therein or not, forfeit 50 *l.* for every hundred weight, together with the goods and package. 23 *G.* 2. *c.* 21. *s.* 32.

And where any such soap shall be seized as forfeited, and no person shall claim the same in 20 days, if it is within the limits of the chief office of excise in *London*, the officer who made the seizure may cause notice signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it is out of the said limits, then publick notice shall be given by proclamation at the next market town, on the market day next after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof. And the judgment thereon shall not be liable to any appeal, or be removed by *certiorari*. 23 *G.* 2. *c.* 21. *s.* 33.

19. The excise laws shall be in force for managing these duties; and the penalties (except where it is herein otherwise directed) shall be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; and distributed half to the king, and half to him that shall sue. 10 *An.* *c.* 19. *s.* 26. 11 *G.* *c.* 30. *s.* 39. 24 *G.* 2. *c.* 40. *s.* 33. Power of the justices.

20. And where any soap shall be seized for non payment of duties, or non-entry, and it shall be disputed whether such payment or entry were made or not, the proof shall lie on the claimer, and not on the officer. 23 *G.* 2. *c.* 21. *s.* 35. Proof to lie on the claimer.

21. And if the party is not satisfied with any judgment of the justices on the act of 23 *G.* 2. *c.* 21. abovementioned, he may appeal to the next quarter sessions (except in the case before mentioned, where no person shall claim the goods seized). *s.* 37. Appeal.

22. And on information on the said act of the 23 *G.* 2. the mitigation shall not reduce the penalty to less than a fourth part, over and above the costs to be allowed. *s.* 38. Mitigation.

23. And all soap, materials, and utensils in the custody of the maker, or of any in trust for him, shall be liable to the duties and penalties, as if the debtor or offender were the lawful owner. 10 *An.* *c.* 19. *s.* 20. Utensils liable.

XIV. Spirituous

XIV. Spirituous liquors.

So far as running of brandy and other spirituous liquors falleth in with the running of other uncustomed goods: see the first part of this title, concerning the Customs in general.

Duty on importation.

1. By the several acts an excise is laid on every gallon of spirituous liquors imported (over and above the customs) as follows; *viz.*

Single brandy, spirits, or *aqua vitæ*, 4*s.* 8*d.* Double brandy, spirits, or *aqua vitæ*, 8*s.* 8*d.*

Which shall be raised as the duties on other excisable liquors. 12 *C.* 2. *c.* 23. 12 *C.* 2. *c.* 24. 4 & 5 *W.* *c.* 3. 6 *W.* *c.* 20. 4 *An.* *c.* 6. 6 *G.* 2. *c.* 17.

Rum, in the whole, 4*s.* 1*d.*

Arrack from the *British* colonies in the *East Indies*, the same as for brandy and foreign spirits imported.

Landing without duty paid.

2. And if any person shall land any *French* brandy before the duty be paid or secured, or without licence from the proper officer so to do; he, and every person aiding therein, or concealing the same when landed, shall not only forfeit the same, but also double value. 1 *An.* *st.* 2. *c.* 14.

And if any officer of the customs or excise shall connive thereat; he shall be incapable to hold any office in the revenue, and forfeit 500*l.* *s.* 2.

Excise officers may go on board.

3. And the officers of excise may go on board any ship or vessel, and search in like manner as the officers of the customs may do, for any excisable liquors, and seize all such as shall be forfeited, and such as shall be unshipped before entry and payment of the duties, together with the casks and other package. 11 *G.* *c.* 30. *s.* 1.

Warrant to search.

4. And if any officer of the excise have cause to suspect, that any foreign spirits shall be fraudulently concealed in any place, entred or not entred, if it is within the bills of mortality, then on oath made before two commissioners, if elsewhere, before one justice, where he suspects them to be concealed, setting forth the ground of his suspicion; he or they may by special warrant authorize such officer by day or night, but if in the night in presence of a constable, to enter, seize, and carry away the same as forfeited, together with the casks or vessels: and if any person shall obstruct such officer, he shall forfeit 100*l.* 11 *G.* *c.* 30. *s.* 2.

Who only may seize.

5. And by a general clause in the 8 *G.* *c.* 18. All brandy, arrack, rum, spirits, and strong waters, *British* or foreign, and all foreign excisable liquors forfeited, together with the casks or other package, may be seized by any officer of the customs or excise, or persons deputed by warrant from the lord treasurer, or under treasurer, or by special commission under the great or privy seal, and no other person. *s.* 24.

Obstructing the officer.

6. And if any person shall obstruct any officer of the customs or excise, in seizing or securing any of the said liquors, or endeavour

vour to rescue them after seizure, or shall after seizure stave, or otherwise damage any cask, or vessel; he shall forfeit 40 *l.* 8 *G. c.* 18. *s.* 25.

Notice to be given of seizure.

7. But no person shall be intitled to any reward given on such seizure, unless he give notice to the next officer of excise, or to the supervisor, in 48 hours; who shall, on such notice, take an account of the species and quantity; nor shall such goods be afterwards removed without a permit from such officer of excise, on pain of being seseized. 12 *G. c.* 28. *s.* 6.

In what ships to be imported.

8. If any brandy or spirits be imported in any vessel of the burden of 40 tons or under (except for the use of the seamen on board, not exceeding one gallon for each); such vessel with her tackle, and also the spirits, or the value thereof, shall be forfeited, and may be seized by any officer of the customs, and prosecuted in the courts at *Westminster.* 6 *G. c.* 21. *s.* 29. 8 *G. c.* 18. *s.* 1, 2.

Ships hovering near the coast.

9. And where any vessel of 50 tons or under, being in part or fully laden with brandy, shall be at anchor, or within two leagues from the shoar, and not proceeding on her voyage, wind and weather permitting; the commander of any man of war or armed sloop appointed for the guard of the coasts, or the commander of any sloop or vessel in the service of the customs, may compel the master to come into port; and the same shall be liable in all cases as ships hovering within the limits of any port. 6 *G. c.* 21. *s.* 31.

And if the master, purser, or other person having charge of the vessel, shall suffer any brandy (or other uncustomed goods) to be put out of the ship, into any hoy, lighter, boat, or bottom, to be laid on land; he shall, besides the other penalties, suffer six months imprisonment. 6 *G. c.* 21. *s.* 32.

And by the 9 *G.* 2. *c.* 35. Where *any* vessel coming from foreign parts, and having on board any foreign brandy or spirits, in casks under six gallons (except only for the use of the seamen, not exceeding two gallons each) shall be found at anchor, or hovering within two leagues of the shore, or be within the limits of any port, and not proceeding on her voyage, wind and weather permitting; all such spirits, with the casks and other package, or the value thereof, shall be forfeited (whether bulk shall have been broken or not); and the same may be seized, or the value thereof sued for by the officers. *s.* 22.

In what casks to be imported.

10. No brandy shall be imported in any vessel not containing 60 gallons at the least; on pain of forfeiting the same, or the value. 4 *W. c.* 5. *s.* 8.

Rum to be warehoused on importation.

11. All rum or spirits of the growth or manufacture of the *British* sugar colonies (imported directly from thence) on entry made, and before payment of the duty, may be landed and put into warehouses, provided at the charge of the proprietor or importer, and approved of by the commissioners; the proprietor or importer first giving bond for payment of the duty, if it be sold within six months; and if it be not sold in that time, then to pay the duty at the end of six months, according to the gage taken at the time of landing and lodging in the warehouse. 15 *G.* 2. *c.* 25. *s.* 1.

And if any rum or ſpirits be landed, before entry at the cuſtom houſe and with the collector of exciſe, and the duties ſecured, or without warrant for landing, or without the preſence of an exciſe officer; the ſame ſhall be forfeited, or the value thereof. *ſ.* 3.

And before it be landed and lodged in the warehouſe, a mark ſhall be ſet upon every caſk, mentioning the quantity, and the proprietor or importer; and the warehouſe keeper and exciſe officer ſhall each keep a book, and enter the particulars carried in or out, and when, and for whoſe uſe delivered; and every ſix months, or oftner if required, tranſmit an account thereof in writing, and on oath, to the commiſſioners of exciſe, who ſhall in one month examine the ſame: and if any rum or ſpirits ſhall be delivered contrary to this act, the warehouſe keeper or officer offending ſhall be diſabled from holding any publick employment, and forfeit 100 *l.* *ſ.* 4.

And the rum or ſpirits may be delivered out of the warehouſe, on payment of the exciſe, and on producing to the warehouſe keeper, and the exciſe officer attending the warehouſe, a certificate of ſuch payment; and the warehouſe keeper ſhall give a permit therewith, ſigned by the exciſe officer, to prevent the ſeizing thereof. *ſ.* 5.

But no proprietor, importer, or buyer, ſhall receive out of the warehouſe leſs than one veſſel of 20 gallons, unleſs for the uſe of ſeamen in a voyage. *ſ.* 6.

And the proprietor or importer may fix a lock on the warehouſe and keep the key; and the exciſe officer may put on another, and keep the key; and the proprietor or importer may in preſence of the warehouſe keeper, or exciſe officer, at all reaſonable times, view, and take out as aforeſaid. *ſ.* 7.

And if any rum or ſpirits remain in the warehouſe above ſix months, without paying the duty, the commiſſioners of exciſe may ſell them by auction, and pay themſelves the duty and charges, rendring the overplus to the proprietor or importer. *ſ.* 9.

Duty on home ſpirits.

12. For every gallon of ſpirits made of imported wine or cyder, ſhall be paid in the whole the ſum of 1 *s.* 3 *d.*

For every gallon of ſtrong waters or *aqua vitæ*, made of any other materials, 7 *d.* $\frac{1}{2}$.

If from foreign or from home materials mixed with foreign; then a further duty of 6 *d.*

If from brewers waſh or tilts, 5 *d.* $\frac{1}{2}$.

If from drink brewed of malted corn, 5 *d.* $\frac{1}{2}$.

If from other *Britiſh* materials, or any mixture therewith 5 *d.*

For every gallon of low wines or ſpirits of the firſt extraction, made from foreign materials, 1 *s.* 7 *d.*

From brewers waſh or tilts, 1 *s.* 4 *d.*

From drink of malt, 5 *d.*

From any other *Engliſh* materials, 7 *d.*

But low wines or ſpirits of the firſt extraction drawn from melaſſes only, ſhall be liable only to 1 *s.* a gallon; and all ſpirits from low wines, or ſpirits of the firſt extraction, drawn from melaſſes only, ſhall be chargeable with 5 *d.* a gallon. 19 *G.* 2. *c.* 12. *ſ.* 37.

Note;

Note; All spirits drawn by any distiller from any mixture of spirits with any kind of wash or other liquor (except common water) shall be deemed low wines, and chargeable with the duties imposed on low wines drawn from foreign materials. 10 & 11 *W. c.* 4. *s.* 9.

13. Any person who shall set up any work or office for that purpose, and thereof shall give notice to the commissioners of excise in ten days, may distill for sale, or to be retailed, any low wines or spirits from drink brewed from malted corn or cyder, and rectify and refine any such spirits of their own making only, paying duties and subject to the same regulations as other distillers. 8 & 9 *W. c.* 19. *s.* 13. Concerning distillers.

And by the 12 *An. st.* 2. *c.* 3. Any person may distill brandy or spirits made from *British* malt or cyder, altho' he hath not served seven years apprenticeship. *s.* 9.

And by the 9 *G.* 2. *c.* 23. Any person who hath exercised the business of distillation for seven years, or hath served, or on *Mar.* 25. 1736. was serving an apprenticeship in the same, may follow any other trade or business in any city, town, or place. *s.* 21.

14. No common distiller or maker of low wines, spirits, or strong waters, for sale or exportation, shall set up any tun, cask, washbatch, copper, still, or other vessel, for making or keeping any worts, wash, low wines, spirits, or strong waters, nor alter or enlarge the same, nor have any of them private or concealed, or any private warehouse, storehouse, cellar, or other place for making or keeping any the said liquors, without first giving notice at the next office of excise; on pain of 20 *l.* and he in whose occupation any of the same shall be, shall forfeit 50 *l.* 8 & 9 *W. c.* 19. *s.* 10. Notice of houses and vessels.

And every person making or keeping any wash, cyder or other materials fit for distillation, and having in his possession any still or stills containing 20 gallons or upwards; shall be deemed a common distiller for sale. *s.* 11.

And if any officer of excise shall have cause to suspect any such private still, back, or other vessel, spirits, low wines, wash or other materials prepared for distillation, to be set up or kept in any place, and shall make affidavit before a justice of the peace, and therein declare the grounds of his suspicion; he may, in the day time, and in presence of a constable, by warrant from such justice to be directed to such officer, break open the door or any part of such suspected house or place, and enter, and seize the same, and detain them there; and if they shall not in 20 days be claimed by the owner, they shall be forfeited, and sold at the next general day of sale; and if they be claimed in 20 days, the person claiming shall forfeit for every warehouse or other place, in which any such still, back, or other vessel shall be found, and also for every such still, back, and other vessel found therein, 200 *l.* 10 & 11 *W. c.* 4. *s.* 7. And by the 10 & 11 *W. c.* 21. he shall incur this forfeiture, whether he shall make any such claim or not. *s.* 23.

But if on breaking open any such door or house, no such private back, still, or other vessel, spirits, low wines, wash, or other materials

materials for distillation, shall be found, the officer shall make good the house or place so broken up, or make satisfaction to the owner to be adjudged by the two next justices (1 Q.); or the party injured may bring his action for the damages; and the same shall be paid by the commissioners out of the revenue of excise; and if any person shall obstruct such officer, he shall forfeit 200 *l.* 10 & 11 *W.* *c.* 4. *s.* 8.

Vessels to be marked.

15. Every distiller shall ten days before he distills or makes any spirituous liquors, make entry at the next office of excise, of every still and other vessel which he shall make use of for brewing, distilling, working, making, laying, or keeping any worts, wash, low wines, spirits, or strong waters; and also of the vessels used for brewing or keeping of the after runnings or feints from the second extraction (which last mentioned vessels shall not at any one time exceed two in number), and also of all such new utensils as they shall make use for the purposes aforesaid, on pain of 50 *l.* for every such still or other vessel, used and not entred: And the distiller shall shew to the officer every still or other vessel entred, and the officer shall mark the same with a particular and durable mark; and every vessel used by such distiller without being so shewn or marked, shall be deemed a vessel or utensil of which no entry has been made; and if any person shall rub out or deface such mark, he shall forfeit 20 *l.* 24 *G.* 2. *c.* 40. *s.* 22.

Private cocks and pipes.

16. No distiller shall have any private pipe or stop cock, or other conveyance, by which any wash or other liquors fit for distillation may be conveyed from one back or vessel to another, or from any such back or vessel to his still, or into any other place, nor shall have any hole in any back or washbatch, by which any wash or other liquor fit for distillation may be conveyed into or out of the same; on pain of 100 *l.* 10 & 11 *W.* *c.* 4. *s.* 3.

And the excise officer in the day time, and in presence of a constable, on request made and cause declared, may break up the ground in any distilling house, or the ground near adjoining, or any wall, partition, or other place, to search; and on finding such pipe or other conveyance, may break up the ground, house, wall, partition, or other place, thro' or into which any such pipe or other conveyance shall lead, and may break up or cut any such pipe or other conveyance, and may turn any cock to try whether such pipe may convey any wash or other liquor. *s.* 4.

And if no such pipe or private conveyance be found, the officer shall make good the ground, wall, house, or other place, or make reasonable satisfaction to the owner, to be adjudged by the two next justices (1 Q.); or the party injured may bring his action for damages; the same to be paid by the commissioners out of the revenue of excise. And if any person obstruct such officer, he shall forfeit 100 *l.* *s.* 5.

But any distiller may use any pipe, stop cock, or other conveyance above ground, in open view, from one end to the other, for letting his wash out of the coolers into his backs or washbatches, and for conveying the wash or worts, out of the back or washbatch into the still. *s.* 6.

17. The

17. The distiller, within the bills, shall 24 hours at least, and elsewhere 48 hours, before he receive any quantity of wine, cyder, sugar, water, or any kind of fermented wash, into his custody, give notice to the officer of excise, of the quantity and species, and when he intends to receive the same; on pain of 50 *l.* 24 *G.* 2. *c.* 40. *s.* 24. Notice of taking in materials.

And by the yearly malt acts, every distiller who shall receive any quantity of cyder or perry into his custody, shall give notice in writing to the officer under whose survey he shall reside, 48 hours before he shall begin to put any of the same into the still, to be drawn into low wines or spirits; and if he shall not give such notice, or shall dispose of any quantity thereof otherwise than by distillation, he shall forfeit 5 *l.* 28 *G.* 2. *c.* 2. *s.* 9.

18. The excise officers by day or by night (but if in the night, in presence of a constable) may enter into all houses and places made use of by distillers or dealers in the said liquors, and by tasting, gaging, or otherwise, may take an account of the quantity and quality; and if such person shall obstruct the officer, he shall forfeit 50 *l.* 6 *G.* *c.* 21. *s.* 14. Officer to enter and survey.

19. And the officer may take a sample of the low wines or spirits, and of the feints and spent wash, paying for such spirits or low wines after the rate of 10 *s.* a gallon, and for the feints and spent wash 1 *s.* a gallon; and if any distiller, his workman or servant, shall refuse to permit him to take such samples, or shall obstruct him in taking thereof, he shall forfeit 50 *l.* 24 *G.* 2. *c.* 40. *s.* 23. Officer may take a sample.

20. If the distiller or maker shall conceal any the said liquors from sight of the gager, he shall forfeit 5 *s.* a gallon. 3 *W.* *c.* 15. *s.* 2. Concealing from the gager.

21. The officer may keep an account of the several sorts of wash which shall be found by him in the hands of a distiller, and upon any decrease of such wash brewed or made from malted corn or corn unmalted, may charge such distiller with so much low wines or spirits of the first extraction as one fourth part of the same wash so decreased shall amount unto; and also with so much proof spirits or spirits of the second extraction, as three fifth parts of the said low wines so charged shall amount unto: and also upon any decrease of wash made from cyder or perry, may charge such distiller upon whom such decrease shall be found, with so much low wines or spirits of the first extraction, as one fifth part of the same wash so decreased shall amount unto; and likewise with so much proof spirits, or spirits of the second extraction, as one half part of the same low wines or spirits of the second extraction shall amount unto. 4 *An.* *c.* 12. *s.* 4. Officer to charge for materials missing.

22. No distiller shall deliver or carry out any low wines, spirits, or *aqua vitæ*, to any of their customers, in cask, or by the gallon, without notice thereof first given to the officer of excise, unless from *Sep.* 29 to *Mar.* 25 yearly, between five in the morning and eight in the evening, and from *Mar.* 25 to *Sep.* 29 yearly, between three in the morning and nine in the evening; on pain of 10 *l.* 7 & 8 *W.* *c.* 30. *s.* 15. Carrying out of the still house.

Retailers houses to be entred.

23. Every person who shall retail less than two gallons, shall ten days before make entry in writing of all warehouses, shops, cellars, or other places by him intended to be used, at the next excise office; and of all spirituous liquors therein: on pain of 20 *l.* for every place, and 40 *s.* for every gallon not entred, and also the liquors and casks. 9 *G.* 2. *c.* 23. *s.* 7.

Retailer to give notice of bringing in.

24. And no spirituous liquors shall be brought into any such warehouse or other place, without first giving notice to the officer of excise; and leaving with him an authentic certificate, that all the duties are paid, or that they have been condemned as forfeited, and expressing the quantity and quality, the name of the seller, and where the duties were paid, or the liquors condemned; on pain of 20 *l.* and the liquors and casks. 9 *G.* 2. *c.* 23. *s.* 7.

Permit on bringing in.

25. No *foreign* brandy or spirits, altho' under one gallon, shall be received into the custody of any retailer, without a permit signifying that the duties were paid, or that it had been condemned; on pain of forfeiting the same, and the vessel. 8 *G.* *c.* 18. *s.* 13.

British to be kept separate from foreign spirits.

26. All dealers in foreign brandy or spirits, who shall receive into their custody *British* spirits, shall keep the same in separate cellars or other places, from their foreign brandy or spirits; on pain of 10 *s.* for every gallon of *British* spirits found in the same place with the foreign spirits, together with the casks in which the said *British* spirits shall be found. 8 *G.* *c.* 18. *s.* 11.

Retailer increasing the liquors.

27. No retailer shall make any increase of the liquors, after they have been taken account of by the officer, by any private addition thereto of water or other liquor; on pain of 40 *s.* a gallon, and the liquors so mixed shall be seized and forfeited. 9 *G.* 2. *c.* 23. *s.* 8.

And if the officer of excise shall find any increase of *foreign* spirits, over and above the quantity which he found at any dealers on the last survey, such increase shall be deemed to be made by foreign spirits for which no duty was paid; and so much as shall be found increased, shall together with the cask be forfeited, unless the owner make it appear, that the increase was made by mixing therewith in the presence of the officer of the division, some of his stock of *British* spirits whereof the officer had taken an account, or by foreign spirits brought with a permit, or that it had been condemned and brought in on due notice given to the officer. 8 *G.* *c.* 18. *s.* 12.

Retailer concealing.

28. The officers at all times by day and night (but if in the night, in presence of a constable, oath being first made before a justice dwelling near of a probable cause of suspecting a concealment) may enter into all such warehouses, shops, or other places, and by tasting, gaging, or otherwise, take an account of the quantity and quality; and if any such retailer shall hinder the officer, he shall forfeit 50 *l.* 9 *G.* 2. *c.* 23. *s.* 9.

None to be sold but in entred places.

29. And no such liquors shall be sold, but in such warehouse, shop, cellar, or other place, so entred; on pain of 40 *s.* a gallon. 6 *G.* *c.* 21. *s.* 15.

And by the 11 *G.* *c.* 30. No *arrack*, whether *British* or foreign, shall be offered to sale, either by wholesale or retail, but in an entred

entred place; on pain of forfeiting the same, with the casks or other vessels, besides the said penalty of 40 *s.* a gallon. *s.* 3.

30. Every person who shall have in his custody above 63 gallons, shall be deemed a seller and dealer in such liquors. 6 *G.* *c.* 21. *s.* 18. Who shall be deemed a seller and dealer.

31. No person shall retail any distilled spirituous liquors or strong waters, mixed or unmixed, without a licence taken out ten days before, for which he shall pay 40 *s.* yearly; if within the bills, from two commissioners of excise; elsewhere, from the collectors and supervisors within their respective districts. 16 *G.* 2. *c.* 8. *s.* 8. 24 *G.* 2. *c.* 40. *s.* 9. Licence for retailing.

And every person who shall retail spirituous liquors mixed or unmixed, to be drank in any quantity whatsoever, in any place to him belonging; or shall retail or send the same abroad in less quantity than two gallons, shall be deemed a *retailer*. 17 *G.* 2. *c.* 17. *s.* 20.

32. And no such licence shall be granted, except to such persons only who keep taverns, victualling houses, inns, coffee houses, or alehouses; and all other licences shall be void: and if any licensed person shall exercise the trade of a distiller, grocer, or chandler, or keep a brandy shop for sale of spirituous liquors, the licence shall be void. 17 *G.* 2. *c.* 17. *s.* 19. Who only shall have licences.

And no licence shall be granted within the limits of the head office of excise in *London*, but to such as occupy tenements of 10 *l.* a year, and pay parish rates for the same; or in places where the occupiers of houses are not rated to the church and poor, then to such persons as pay rent of 12 *l.* a year, and not otherwise; nor to persons in any other part of the kingdom, but such as pay to the church and poor: And no licence shall be of any avail longer than he shall be so qualified. 24 *G.* 2. *c.* 40. *s.* 12. 26 *G.* 2. *c.* 13. *s.* 9.

33. And such persons also shall first be licensed to sell ale or spirituous liquors, by two or more justices of the peace. 16 *G.* 2. *c.* 8. *s.* 11. To be first licensed by justices.

And the justices of the peace, and other officers, shall have the same jurisdiction over such retailers of spirituous liquors, as they have over alehousekeepers. 12 & 13 *W.* *c.* 11 *s.* 18. 2 *G.* 2. *c.* 28. *s.* 10.

34. And no licence shall impower any person to sell spirituous liquors in any place, except in the house or places thereto belonging, wherein they shall inhabit at the time of granting the licence. 17 *G.* 2. *c.* 17. *s.* 22. To be licensed only where they dwell.

35. Persons retailing without licence shall forfeit 10 *l.* and on nonpayment when demanded, one justice on oath of such neglect shall commit the offender to the house of correction, to be kept to hard labour for two months, or till paid. 16 *G.* 2. *c.* 8. *s.* 9. Penalty of selling without licence.

And the said penalty shall in no case be mitigated below the sum of 5 *l.* 24 *G.* 2. *c.* 40. *s.* 11. 26 *G.* 2. *c.* 13. *s.* 8.

And the justices may, if they think proper, instead of levying the penalty, commit the offender to the house of correction, to be kept to hard labour for two months; and the person so committed

ſhall before his diſcharge, be ſtript naked from the middle upwards, and whipt until his body be bloody. 17 *G.* 2. *c.* 17. *ſ.* 18.

And alſo all the diſtilled ſpirituous liquors that ſhall be then, or at any time within ſix months after conviction, found in his cuſtody, houſe, or other place occupied therewith, whether it be in his own occupation or not, ſhall by warrant of the ſaid commiſſioners, or of one juſtice, be ſeized, and ſtaved, or otherwiſe deſtroyed: And any peace or pariſh officer, authorized by ſuch warrant, may at any time in ſix months after conviction enter ſuch places, and break open doors, if not opened on demand. And if any perſon ſhall offend again in like manner, the commiſſioners or juſtices before whom he ſhall be convicted of ſuch ſubſequent offence, may inflict the penalties by any former law to be inflicted for ſuch offence, and alſo commit the offender to the houſe of correction, to be kept to hard labour not exceeding three months, and alſo (if they ſhall think fit) order him to be whipt. And being convicted of a third offence, it ſhall be deemed felony, and the ſeſſions may tranſport him for any time not exceeding ſeven years. 24 *G.* 2. *c.* 40. *ſ.* 13.

And the conviction ſhall be in this form, or to the like effect, *viz.*

Middleſex. A. B. *is convicted on his own confeſſion* (or *on the oath of* A. W.) *of having ſold ſtrong waters in the pariſh of* ——— *in this county, on the* ——— *day of* ——— *without being duly licenſed thereto: This is the firſt, ſecond, or third conviction. Given under my hand and ſeal* &c.

And the commiſſioners, or one juſtice, on oath of any offence againſt this act, or any other act for regulating the retailing of ſpirituous liquors, may grant a warrant to any of the peace officers, or other pariſh officers, to enter and ſearch the houſes and other places, where the offence ſhall be ſworn to have been committed, or in the occupation of the perſons ſworn to be guilty thereof, and they may break open the doors if not opened on demand, and ſeize all ſuch diſtilled ſpirituous liquors as they ſhall there find, and detain the ſame, till the offence ſhall be heard and determined; and if the offender be convicted, the liquors ſhall be forthwith ſtaved; and if he be not convicted, the ſame ſhall be reſtored. 24 *G.* 2. *c.* 40. *ſ.* 14.

Hawking in the ſtreets.

36. No perſon ſhall hawk, ſell, or expoſe to ſale any ſpirituous liquors about the ſtreets, highways, or fields, in any wheelbarrow or baſket, or on the water in any boat, or in any other manner; or ſhall ſell or expoſe the ſame to ſale, on any bulk, ſtall, or ſhed, or any other place other than as above is allowed; on pain of 10 *l.* And one juſtice, on his own view, or confeſſion, or proof of one witneſs, may convict him; whereupon he ſhall immediately pay the 10 *l.* to the churchwardens and overſeers: and on refuſal or neglect, the juſtice ſhall commit him to the houſe of correction to be kept to hard labour for two months to be reckoned from the day of commitment; and he ſhall not be diſcharged till he pay the ſum, or till the two months be expired. If there is no informer, it ſhall be wholly to the uſe of the

poor; otherwise, half to the informer, and half to the poor. 9 *G.* 2. *c.* 23. *s.* 13.

And moreover, he shall before his discharge from the house of correction, be stripped naked from the middle upwards, and whipt until his body be bloody. 10 *G.* 2. *c.* 17. *s.* 9.

And any one justice, on information on oath against such person, may (without any previous summons) issue his warrant for apprehending and bringing him before some justice where the offence was committed. 11 *G.* 2. *c.* 26. *s.* 4.

And any person may seize and detain him, until he may give notice to the constable, churchwarden, overseer, or other peace or parish officer; who shall carry the person so seized and detained, before a justice of the peace, who shall proceed thereon as in case where he is brought by the constable. 11 *G.* 2. *c.* 26. *s.* 5.

M. 13 *G.* 2. *K.* and *Crofts.* A woman was convicted for selling gin, and it appearing that she was a feme covert, it was objected that she could not be convicted, for as she could make no contract, it must be taken to be her husband's sale; or if she could be convicted, the husband ought to have been joined for conformity. It was answered, that where the crime is of such a nature, as can be committed by her alone, she may be prosecuted without her husband; which being a proceeding grounded merely on the breach of the law, he shall not be included unless privy: In this case there may be imprisonment and whipping. And by the court, We think the conviction is right; for this is not like the cases that sound only in damages. The wife may be convicted for recusancy. And though she cannot have the benefit of the contract, yet she as well as a servant may do the act of vending. Besides, there would be a plain way to evade the act, if femes covert could not be convicted. *Str.* 1121.

Occupier of the house shall be liable.

37. If any less quantity than two gallons shall be sold or delivered in any clandestine manner, to any person, in any house, outhouse, stable, barn, shed, or other place, part of or belonging to any house or farm; in such case, the occupier, or occupiers (if more than one) consenting thereto, shall be deemed retailers, and forfeit as selling without licence. 11 *G.* 2. *c.* 26. *s.* 1.

Persons giving away spirituous liquors.

58. Persons giving away spirituous liquors, to servants or apprentices fetching goods from their shops, shall be deemed retailers. 9 *G.* 2. *c.* 23. *s.* 16.

Paying wages in spirituous liquors.

39. If any master or other person shall agree to pay any workman, servant, or labourer, or other person employed by him or for him, so much money for wages, and so much spirituous liquors, as together with the money shall amount to the value of the wages usually paid in like cases; or shall set off or deduct any part of the wages, for any spirituous liquors; he shall be deemed a retailer, and forfeit 20 *l.* over and above the other penalties, and such servant shall be intitled to his whole wages. 9 *G.* 2. *c.* 23. *s.* 11.

Apothecaries selling spirituous liquors.

40. But nothing herein shall extend to physicians or apothecaries selling the same as medicines. 9 *G.* 2. *c.* 23. *s.* 12. 16 *G.* 2. *c.* 8. *s.* 12.

Selling in gaols or workhouses.

41. No licence shall be granted for retailing of any spirituous liquors, within any gaol, prison, house of correction, workhouse, or house of entertainment for parish poor; and if any keeper of such prison or house shall sell, use, lend, or give away, or knowingly suffer any spirituous liquors or strong waters to be sold, used, lent, or given away in any such gaols or houses, or brought into the same, except such as shall be prescribed by the direction of a regular physician, surgeon, or apothecary, from the shop of some regular apothecary,———he shall forfeit 100*l.* half to the king, and half (with full costs) to him who shall sue in the courts at *Westminster*. And if any such person shall offend again in like manner, and be a second time convicted; he shall forfeit his office. 24 *G.* 2. *c.* 40. *s.* 17.

And any justice, on information on oath that spirituous liquors or strong waters are kept and disposed of in any such prison or other place, may enter and search, or impower by warrant any constable to search for and seize all such liquors as shall be found (except such as are directed to be used medicinally) and to stave and destroy the same. *s.* 18.

And if any person shall bring, or endeavour to bring any such liquors (except in the way of medicine as before mentioned) into any such gaol or other place, the gaoler or his servants may apprehend and carry such offender before any justice of the peace, who shall hear and determine such offence in a summary way; and if by the oath of one witness, or otherwise, such person shall be convicted, he shall be committed to prison or to the house of correction, not exceeding three months, unless he shall immediately pay down such fine not exceeding 20*l.* and not less than 10*l.* as the justice shall impose, to be paid half to the informer, and half to the poor of such prison or workhouse. *s.* 19.

And the gaoler, keeper, master, or other officer, shall procure a copy of the three preceding clauses, to be printed or fairly written, and hung up in one of the most publick places of his gaol, house of correction, or workhouse aforesaid, and renew the same from time to time, so that it be always kept fair and legible; on pain of 40*s.* by warrant of one justice, on oath of one witness. And any justice may enter and demand a sight of it, and if it shall not be shewn to him hung up in some publick place fair and legible; he shall immediately convict such person, and so from time to time as often as he shall think fit: half to be to the informer, and half (or the whole if there be no informer) to the poor of such gaol or other place. *s.* 20.

Recovering debt for spirituous liquors.

42. No person shall recover any debt on account of spirituous liquors, unless it shall *bona fide* have been contracted at one time to the amount of 20*s.* or upwards; nor shall any particular article in any account be allowed, where the liquors delivered at one time, shall not amount to the full value of 20*s.* and where no part of the liquors so sold shall be agreed to be returned; and if any retailer, with or without a licence, shall take any pawn by way of security for payment of any money for such liquors, he shall forfeit 40*s.* by warrant of one justice, half to the poor, and half to the informer; and the owner shall have such

ſuch remedy for recovering ſuch pawn, as if it had never been pledged. 24 *G.* 2. *c.* 40. *ſ.* 16.

43. If any diſtiller or other perſon ſhall knowingly ſell or deliver any diſtilled ſpirituous liquors, that the ſame may be unlawfully retailed, or to any unlicenſed retailer; he ſhall forfeit 10*l.* and treble value of the liquors, half to the king, and half to him that ſhall ſue in the courts at *Weſtminſter*. And if any perſon guilty of retailing ſuch liquors, ſhall diſcover the diſtiller or perſon who knowingly ſupplied him therewith, and proſecute him to conviction, he ſhall be intitled to his ſhare of the penalty, and indemnified againſt all penalties incurred by him before that time, for ſelling ſpirituous liquors without licence. 24 *G.* 2. *c.* 40. *ſ.* 15.

Diſtiller delivering to unlicenſed retailer.

44. If any perſons to the number of five or more, ſhall in a tumultuous and riotous manner aſſemble to reſcue any offenders againſt any act relating to ſpirituous liquors, or for licenſing the retailers thereof, or to aſſault any perſon who ſhall have given or is about to give any information againſt, or ſhall have diſcovered or given evidence againſt, or ſhall ſeize or bring to juſtice any offender; he, his aiders and abettors, ſhall be guilty of felony, and tranſported for ſeven years. 24 *G.* 2. *c.* 40. *ſ.* 32.

Riotouſly reſcuing offenders, or aſſaulting informers.

45. Where any ſuch liquors ſhall be ſold in any ſuch entred place, the officer ſhall on requeſt of the ſeller (without fee) give the buyer a certificate ſigned by him, expreſſing the quantity, the name of the buyer and ſeller, and that the duty hath been paid, or that it hath been condemned as forfeited. 6 *G.* *c.* 21. *ſ.* 16.

Permit for removal after ſale.

And no ſuch liquor, exceeding one gallon, ſhall be carried without ſuch certificate or permit; on pain of forfeiting the ſame with the caſks and veſſels. *ſ.* 17.

And if any perſon ſhall take out a permit, and not remove the liquors accordingly, nor return the permit; he ſhall forfeit treble value: And if there appears not a ſufficient decreaſe in the ſtock, to anſwer the quantity in the permit, the officer may ſeize ſo much as will anſwer the quantity. But no perſon ſhall receive a permit, without direction in writing of the perſon (or his ſervant) from whoſe ſtock the goods are to be removed; on pain of 50*l.* and in default of payment, three months impriſonment. 11 *G.* *c.* 30. *ſ.* 10.

46. If any perſon ſhall offer any ſpirituous liquors to ſale, not having a permit; or if any pedlar, or other trading perſon, going from town to town, or other mens houſes, and trading either on foot, or with any horſe or other cattle, or otherwiſe, ſhall offer any ſuch liquors to ſale, altho' he have a permit: the perſon to whom they are offered to ſale, may ſeize and detain ſuch liquors, and carry them to the next warehouſe belonging to the cuſtoms or exciſe, and bring the perſon before a juſtice, to be by him committed to priſon, and proſecuted for the penalties incurred for ſuch offence; and ſuch liquors may be proſecuted in the name of the perſon who ſtopped or ſeized the ſame, in like manner as if they had been ſeized by an officer. 9 *G.* 2. *c.* 35. *ſ.* 20.

Selling without a permit, or pedlars with one.

47. When any officer of the cuſtoms ſhall neglect to ſeize and proſecute any veſſel, boat, horſes, or other cattle or carriage, for-

Officer neglecting to ſeize.

feited for running of brandy, and shall be convicted thereof on his appearance or default, by oath of one witness or confession; he shall forfeit 50 *l.* 6 *G.* 2. *c.* 17. *s.* 10.

Constable neglecting his duty.

48. If any constable or other peace officer, shall refuse or neglect on notice, or his own view, to be aiding in the execution of this, or of the acts of 9 *G.* 2. or 10 *G.* 2. herein mentioned; he shall, on conviction by the oath of one witness, forfeit 20 *l.* 11 *G.* 2. *c.* 26. *s.* 7.

Carrying coastwise.

49. All low wines or spirits carried coastwise, without a certificate from the officer of excise where they were made, that the duty hath been paid, shall be forfeited, and seized by the officers where they shall be brought in. 3 *G.* *c.* 4. *s.* 17.

Exportation.

50. It is generally provided by the several statutes, that home spirits may be exported, and a drawback of the duties allowed thereupon.

But by the 6 *G.* 2. *c.* 17. for spirits drawn from *British* corn, there shall be allowed a drawback by the excise officers at the port of shipping, of 4 *l.* 18 *s.* a ton, in full of all drawbacks: Except that for every ton of spirits drawn from barley malt, or other corn, there shall be paid by the officers of the customs, when barley is 24 *s.* a quarter, or under, 1 *l.* 10 *s.* in like manner as for corn exported. *s.* 7, 8.

Power of the justices.

51. All the penalties, not herein otherwise directed, shall be sued for and mitigated as by the laws of excise, or in the courts at *Westminster*; and be half to the king, and half to the informer or prosecutor. 24 *G.* 2. *c.* 40. *s.* 33.

Reward where no penalty is levied.

52. And where the retailer is sent to the house of correction, the commissioners shall cause rewards, not exceeding 5 *l.* to be paid to the informers. 17 *G.* 2. *c.* 17. *s.* 21.

Limitation of actions.

53. No information shall be brought against a distiller, for any false or misentry, or offence, but within three months after the offence committed; and notice thereof shall be given to the party in writing, or left at his dwelling house, within a week after laying the information. 12 & 13 *W.* *c.* 11. *s.* 17.

Sale after condemnation.

54. And the commissioners shall cause all foreign excisable liquors, seized for non-payment of duty, or for being prohibited to be imported, to be publickly sold, after condemnation, to the best bidder, at such places as they shall think proper. 12 *G.* *c.* 28. *s.* 1.

Utensils liable.

55. And all stills, worms, and still heads, and other vessels and utensils for distilling, by whomsoever they shall be claimed, shall be liable to arrears. 7 & *W.* *c.* 30. *s.* 13.

Conviction to be kept amongst the records of the sessions.

36. The justices within the limits of the head office of excise in *London*, shall once in every month transmit to the clerk of the peace, a certificate of all persons convicted before them for any offences against this or any former act relating to spirituous liquors, or for licensing the retailers thereof; who shall keep and enter the same among the records of the court: which certificate shall be evidence upon any information relating to spirituous liquors. 24 *G.* 2. *c.* 40. *s.* 21.

XV. Starch and hair powder.

1. By the 10 *An. c.* 26. and 12 *An. st.* 2. *c.* 9. For all starch imported shall be paid 4*d.* a pound, over and above all other duties. Duty on starch imported.

And all hair powder made of starch, or other powder that will serve for the same uses as starch, shall on importation pay the same duties, as foreign starch imported. 3 *G. c.* 4. *s.* 14.

2. And by the said acts, for all starch made in the kingdom, a duty shall be paid of 3 *d.* a pound. Duty on home starch.

3. For the management of which duties on home starch, the commissioners of the treasury shall appoint commissioners, who shall substitute inferior officers. 10 *An. c.* 26. *s.* 9. Officers for these duties.

3. And no maker of starch shall set up or use any workhouse, storehouse, room, or other place, for making, drying, or keeping of starch, or for the converting or keeping any flour, meal, or other materials proper to be made into starch, or use any fat, trough, box, stove, utensil or other vessel for making of starch; without notice thereof being first given in writing at the next office for the said duties; on pain of 50*l.* 10 *An. c.* 26. *s.* 10. Places of making to be entred.

And all flour, meal, and other materials, found in any private workhouse, or other place, and all private utensils and vessels for making or keeping starch, for which no entry shall be made, or notice given, shall be forfeited, or the value thereof. 10 *An. c.* 26. *s.* 22.

5. And the officers shall at all times by day or night, and if in the night in presence of a constable, be permitted on request to enter the house, workhouse, warehouse, or other place used by any maker of starch; and by gaging or weighing the starch, and gaging the boxes and other utensils, or otherwise, to take an account of the quantity; and thereof shall make return in writing to the commissioners, leaving a true copy, if demanded, under his hand, with the maker; and if he shall not leave such copy (after demand in writing, 12 *G. c.* 28. *s.* 30.) he shall forfeit 40*s.* 10 *An. c.* 26. *s.* 14. Officers to enter and survey.

6. And if the maker shall obstruct such officer in the execution of his duty, he shall forfeit 20*l.* 10 *An. c.* 26. *s.* 18. Obstructing the officer.

7. The maker shall use regular, square, or oblong boxes only, for boxing and draining his green starch, before it is dried in the stove; on pain of 10*l.* 4 *G.* 2. *c.* 14. *s.* 1. How to be boxed in making.

8. And he shall, if within the bills, give 12 hours, elsewhere 24 hours notice in writing to the officer, of his intention to put any green starch into such boxes; on pain of 20*l.* And he shall, within two hours after such notice shall have been given, begin to box it, and so continue, that the officer may have a gage of the whole; on pain of 20*l.* 4 *G.* 2. *c.* 14. *s.* 1. Notice of boxing.

9. And if the charge be made by gaging it before it be dried in the stove; then every box of green starch, or starch before it be dried, containing 57 inches in length, and 10 inches in breadth, and eight inches in depth, or in the whole 4560 solid inches, shall Gaging in the boxes.

be

be esteemed 131 pounds *averdupois*, of starch dried and perfectly made. 1 *G. st.* 1. *c.* 2. *s.* 6.

Scales and weights.

10. And the maker shall keep scales and weights at the place where he makes his starch, and permit and assist the officer to make use thereof; on pain of 10 *l.* 10 *An. c.* 26. *s.* 16.

Removing before surveyed.

11. No maker of starch shall (on pain of 20 *l.*) remove any starch, of which no account hath been taken by the officer, from the place where it was made; without giving to the officer within the bills 24 hours notice, and elsewhere two days notice. 10 *An. c.* 26. *s.* 19.

And by 4 *G.* 2. *c.* 14. If he shall remove any starch after it is dried, out of the stove or drying place, before it has been weighed and taken account of by the officer; he shall forfeit 50 *l.* *s.* 2.

Concealing.

12. If any officer of the duties upon starch or of the customs, shall have any cause to suspect that starch is privately making in any place, or concealed; then upon oath made before any commissioner or justice residing near, setting forth the ground of his suspicion, such commissioner or justice may issue his warrant, to authorize such officer by day or night (but if in the night, in presence of a constable) to enter such suspected place, and seize and carry away the same, with the materials, as forfeited, together with the boxes and other things containing it: and unless the party make it appear that the duty has been paid, he shall forfeit 50 *l.* and if any person obstruct the officer, he shall forfeit 100 *l.* 4 *G.* 2. *c.* 14. *s.* 4. 23 *G.* 2. *c.* 21. *s.* 34.

Officer to charge for materials missing.

13. The officer shall be permitted to take an account of the quantities of flour, meal, and other materials proper to be made into starch, that shall be in the possession of the maker; and if he shall miss any such materials, which he had taken an account of the last time he was there, and shall not on reasonable demand, receive satisfaction what is become thereof, he may charge the maker with such quantity of starch, as such materials so missing in his judgment would reasonably have made, not exceeding 25 pounds weight of starch, for every bushel of such ingredients mixed or unmixed. 10 *An. c.* 26. *s.* 17.

Starch unsurveyed to be kept separate.

14. The maker shall keep all starch by him made and not surveyed, separate from other starch which hath been surveyed, for 24 hours after making within the bills, and for two days elsewhere, unless it shall be sooner surveyed; on pain of 5 *l.* 10 *An. c.* 26. *s.* 20.

Entry of starch made.

15. The maker within the bills shall monthly, and elsewhere every six weeks, make entry in writing at the next office, of all the starch by him made, setting forth the weight, and how much was made at each time; on pain of 50 *l.* Which entry shall be on oath of the maker or his chief workman, according to the best of his knowledge and belief, before such officer as shall be appointed by the commissioners within the bills, and elsewhere before the collector and supervisor. 10 *An. c.* 26. *s.* 11.

But he shall not be obliged to go further to make entry, than to the next market town. *s.* 12.

Payment of the duties.

16. The maker within the bills shall within four weeks, and elsewhere within six weeks after entry, clear off the duties; on

pain of double duty: And no maker, after default in payment, shall sell or deliver out any starch until he hath cleared off the duty; on pain of double value. 10 *An. c.* 26. *s.* 13.

17. Cocquets granted for shipping starch, to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if shipped without such cocquet, it shall be forfeited and seized, together with the package. 23 *G.* 2. *c.* 21. *s.* 29. Carrying it coastwise.

18. No starch shall be *imported* otherwise than in some package containing at least 224 pounds of neat starch, and stowed openly in the hold; on pain of being seized and forfeited, together with the package, and the master of the vessel to forfeit 50*l.* 23 *G.* 2. *c.* 21. *s.* 27. Importation and exportation.

But on information brought against such master, he may detain the wages of the mariners, till it be determined; and if it shall appear, that the starch was put on board by any mariner without the master's knowledge, the master may apply the wages of such mariner in payment of the forfeiture. 26 *G.* 2. *c.* 32. *s.* 8.

And the officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all starch forfeited, together with the package; and they may likewise seize such as before entry and payment of duties, shall be found unshipping or unshipped. 23 *G.* 2. *c.* 21. *s.* 28.

Starch that hath paid the duties may be *exported*; and the duties shall be drawn back. 10 *An. c.* 26. *s.* 25, 26, 27.

But no drawback shall be allowed on the exportation of any foreign starch imported. 23 *G.* 2. *c.* 21. *s.* 36.

And the officers of excise or customs may seize any starch or hair powder, with the horses and package, where they have good reason to suspect that it hath been privately made, or imported without payment of duty, or relanded after drawback; and shall in ten days exhibit an information before three commissioners of excise, or two justices near where the seizure is made; and if the party doth not make it appear that the duty hath been paid it shall be forfeited together with the horses and package, and the offender shall likewise forfeit 5*l.* for every hundred weight. 4 *G.* 2. *c.* 14. *s.* 3.

And by the 23 *G.* 2. *c.* 21. it is enacted, that the said officers may seize any starch, with the package, that shall be found in any vessel, cart, or other carriage, where they shall have good reason to believe that the same was made in some private workhouse, or clandestinely imported, or relanded after drawback: and if the party, at the hearing of the information, shall not make it appear that the duty hath been paid or secured, he shall forfeit 5*l.* for every 100 pounds weight, and also the goods and package shall be forfeited. *s.* 30.

And if any foreign starch shall be unshipped, with intention to be laid on land before entry and payment of the duties, or shall be landed again after shipping for exportation on debenture; the same, together with the package, vessels, boats, horses, and other carriages, used in landing or conveying the same, shall be forfeited,

ed, and may be seized by any officers of the customs or excise; and the persons from whom the same shall be seized, shall forfeit 5 *l.* for every hundred weight. 23 *G.* 2. *c.* 21. *s.* 31.

And if any person shall knowingly harbour or conceal any starch unlawfully imported, or relanded after shipping for exportation upon debenture; he shall, whether he claims any property therein or not, forfeit 50 *l.* for every hundred weight, together with the goods and package. 23 *G.* 2. *c.* 21. *s.* 32.

And where any such starch shall be seized as forfeited, and no person shall claim the same in 20 days, if it is within the limits of the chief office of excise in *London*, the officer who made the seizure may cause notice signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it is out of the said limits, then publick notice shall be given by proclamation, at the next market town, on the market day, next after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof: And the judgment thereon shall not be liable to appeal, nor be removed by *certiorari*. 23 *G.* 2. *c.* 21. *s.* 33.

Making of hair powder.

19. No perfumer, peruke maker, barber, or dealer in hair powder, shall make, use, or offer to sale, any powder made of or mixed with alabaster, talke, plaister of *Paris*, whiting, lime, or other thing of the like nature (sweet scents only excepted); on pain of forfeiting the same, and 50 *l.* 12 *An. st.* 2. *c.* 9. *s.* 20.

And by the 4 *G.* 2. *c.* 14. If any maker of hair powder, or other such person, shall mix any powder of alabaster, plaister of *Paris*, talke, chalk, whiting, lime, or any other material (rice first made into starch, and sweet scents only excepted) with any starch or powder of starch to be made use of for making of hair powder, and shall make any hair powder with any the said materials, or any other material except starch or powder of starch, or of rice first made into starch, and shall use, sell, or offer to sell any hair powder so mixed or made; he shall forfeit the same, and 20 *l.* *s.* 5.

Places of making hair powder to be entred.

20. Every maker of hair powder shall make entry in writing at the next excise office, of his place of abode, and of his workhouse or other place made use of for making hair powder; on pain of 20 *l.* 4 *G.* 2. *c.* 14. *s.* 6.

Officer to enter the same and survey.

21. And the officer, in the day time, on his request, may enter places used for making hair powder, and the shops of perfumers, peruke makers, barbers, and other sellers or dealers in hair powder, and examine the same, and carry away samples, paying a reasonable price for the same. 4 *G.* 2. *c.* 14. *s.* 7.

And if such starch maker or dealer shall not on request suffer him to enter, and examine, and take samples (on offering to pay the common price); he shall forfeit 20 *l.* *id. s.* 9.

Person having in his possession materials for adulterating hair powder.

22. And if any starch maker, or dealer in hair powder, shall have in his possession, for making, mixing, or counterfeiting hair powder, any alabaster, plaister of paris, talk, chalk, whiting, lime, or other material, besides starch, or powder of starch, or of rice first made into starch; he shall forfeit the same, and 10 *l.* 4 *G.* 2. *c.* 14. *s.* 8.

23. All

23. All the said forfeitures shall be sued for, levied and mitigated, as by the laws of excise, or in the courts at *Westminster*; and be distributed half to the king, and half (and on the 10 *An.* *c.* 26. half with full costs) to the prosecutor. 10 *An.* *c.* 26. *s.* 29. 24 *G.* 2. *c.* 40. *s.* 33. Power of the justices.

24. And where any starch shall be seized for non-payment of duties, or non-entry, and it shall be disputed whether such payment or entry were made or not; the proof shall lie on the claimer, and not on the officer. 23 *G.* 2. *c.* 21. *s.* 34. Proof to lie on the claimer.

25. And if the party is not satisfied with any judgment of the justices, on the act of 23 *G.* 2. *c.* 21. abovementioned, he may appeal to the next quarter sessions (except in the case beforementioned, where no person shall claim the goods seized.) *s.* 36. Appeal.

26. And the mitigation on the said act of 23 *G.* 2. shall not reduce the penalty to less than a fourth part, over and above the charges. *s.* 37. Mitigation.

27. And all starch, materials, and utensils, in custody of the maker, or of any person to his use, shall be liable to all arrears of the duty, and penalties; and such proceedings may be had thereupon, as if the debtor or offender were the lawful owner. 10 *An.* *c.* 26. *s.* 23. Utensils liable.

XVI. Wire.

1. No foreign embroidery, or gold or silver brocade, thread, lace, fringe, or work made thereof, or of copper, brass, or other inferior metal, or gold or silver wire or plate shall be imported. 15 *G.* 2. *c.* 20. *s.* 7. 22 *G.* 2. *c.* 36. *s.* 1. Importing of wire.

2. For all gilt wire made in *Great Britain* shall be paid a duty of 8 *d.* an ounce; for silver wire 6 *d.* an ounce, *troy* weight. 10 *An.* *c.* 26. *s.* 46. Duty on home wire.

3. And the commissioners of the treasury shall appoint commissioners for these duties, who shall substitute inferior officers. 10 *An.* *c.* 26. *s.* 48. Officers for these duties.

4. And every person who shall draw any gold or silver wire into such wire as is commonly called big wire, shall first give notice in writing at the next office for the said duties, of his name and place of abode, and where he intends to work; on pain of 20 *l.* And no refiner, wiredrawer, or other person, shall draw any gold or silver into such big wire, at any place other than some common bar house to be approved of by the commissioners; on pain of 20 *l.* 10 *An.* *c.* 26. *s.* 49. Places of making to be entred.

And all gilt and silver wire, and bars for making it, which shall be found in any private workhouse, and all private utensils for barring or drawing it, of which notice hath not been given, shall be forfeited and seized, or the value thereof recovered. 10 *An.* *c.* 26. *s.* 59.

5. And the officer shall at all times, by day or night, and if in the night in presence of a constable, be permitted on his request to enter the bar house, workhouse, or other place used for making of such wire, and take an account of the weight, and thereof make return in writing to the commissioners, or to whom they shall Officer to enter and survey.

shall appoint, leaving a copy thereof, if demanded, with the maker; and if he shall refuse to leave such copy (after demand in writing, 12 *G. c.* 28. *s.* 30.) he shall forfeit 40 *s.* 10 *An. c.* 26. *s.* 52.

Obstructing the officer.

6. And if any such maker shall obstruct the officer, in the execution of his office, he shall forfeit 20 *l.* 10 *An. c.* 26. *s.* 55.

Scales and weights.

7. And the maker shall keep weights and scales at the place of making the wire, and permit and assist the officer to weigh; on pain of 10 *l.* 10 *An. c.* 26. *s.* 54.

Ingots to be weighed.

8. Every ingot or bar of silver, designed for gilt wire, shall be weighed in the presence of the excise officer, who attends the forge where they are made, before they be covered with gold; and shall be weighed in presence of, and marked by the said officer, after the gold is laid on: and on refusal to admit the officer, the refiner or maker shall forfeit 20 *l.* half to the king, and half to him that shall sue. 15 *G.* 2. *c.* 20. *s.* 8, 9.

Allowance for waste.

9. If the officer's charge be made, by taking the weight of the gold and silver in big wire at the bar house, an allowance of one fifth part shall be made, in consideration of the waste, in reducing the same to small wire. 10 *An. c.* 26. *s.* 53.

Removing before surveyed.

10. No wire drawer shall (on pain of 40 *l.*) remove any gilt or silver wire, of which no account hath been taken, from the bar house or place of making, without giving to the officer 24 hours notice. 10 *An. c.* 26. *s.* 56.

Wire unsurveyed to be kept separate.

11. Wire not surveyed shall be kept separate from that which hath been surveyed, for 24 hours after making, unless it shall be sooner surveyed; on pain of 10 *l.* 10 *An. c.* 26. *s.* 57.

Concealing.

12. If the maker, or he for whom it is made, shall conceal any wire, or bars of silver prepared for making it; he shall forfeit 20 *l.* 10 *An. c.* 26. *s.* 58.

Entry of wire made.

13. The maker shall once in every month make entry in writing at the next office, of all the wire by him made, setting forth the weight, and kinds, and how much was made in each week; on pain of 100 *l.* Which entry shall be made on the oath of the maker, or his chief workman, to the best of his knowledge and belief, to be administred by the officer. 10 *An. c.* 26. *s.* 50.

Payment of the duty.

14. And the duty shall be cleared off in six weeks after entry, on pain of double duty. 10 *An. c.* 26. *s.* 51.

Exportation.

15. If any person shall export any gold or silver thread, or lace, or fringe made of plate wire spun upon silk, he shall have a drawback after the rate of 5 *s.* a pound *averdupois*, of such silver thread, lace, or fringe, and of 6 *s.* 8 *d.* a pound of such gold thread, lace, or fringe. 10 *An. c.* 26. *s.* 62.

Power of the justices.

16. All the powers of the excise laws shall be in force for managing these duties: and the penalties and forfeitures (not herein otherwise directed) shall be sued for, levied, and mitigated, as by the laws of excise, or in the courts at *Westminster*; and be employed, half to the use of the king, and half to him that shall inform or sue. 10 *An. c.* 26. *s.* 64. 24 *G.* 2. *c.* 40. *s.* 33.

Utensils liable.

17. And all such wire, materials, and utensils, in custody of any maker, or other to his use, shall be liable to the duties and penalties; and such proceedings may be had thereupon, as if

if ſuch debtor or offender were the lawful owner. 10 *An. c.* 26. *ſ.* 60.

For regulations concerning the true making of gilt and ſilver wire (which do not belong to this place) ſee the act of 15 *G.* 2. *c.* 20.

And for prohibiting the ſelling or working up of foreign gold or ſilver lace or thread, ſee the 22 *G.* 2. *c.* 36.

Information againſt an alehouſekeeper for arrears.

Weſtmorland. BE *it remembred, that this* ——— *day of* ——— *in the* ——— *year of the reign of his majeſty king* George *the ſecond that now is, at* ——— *in the ſaid county,* A. I. *gentleman, in his proper perſon, as well for his ſaid majeſty, as for himſelf, exhibiteth to us* A. P. *and* J. P. *eſquires, two of his ſaid majeſty's juſtices of the peace for the ſaid county, reſiding near to the place where the forfeiture herein after mentioned was made, a complaint and information, and thereby informeth us, that at ſeveral times between the* ——— *day of* ——— *and the* ——— *day of* ——— *both now laſt paſt, at* ——— *aforeſaid in the ſaid county, one* A. O. *at a common alehouſe then and there belonging to and uſed by him, did brew the ſeveral and reſpective quantities of beer and ale herein aftermentioned; that is to ſay,* 30 *barrels of ſtrong beer and of ſtrong ale, each above* 6 s. *the barrel; and* 60 *barrels of ſmall beer, not exceeding* 6 s. *the barrel; and that the ſaid* A. O. *at and during the reſpective time and times of brewing the ſaid beer and ale, and of every part thereof, was and yet is a common alehouſekeeper; and that there did thereby accrue and become due to his ſaid majeſty from the ſaid* A. O. *for the ſaid beer and ale ſo by him brewed as aforeſaid, certain rates, duties, and ſums of money, amounting in the whole to the ſum of* ——— *of lawful money of* Great Britain; *which ſaid rates, duties, and ſums of money ſo accrued, or any part thereof, the ſaid* A. O. *hath not paid or cleared off, to or for the uſe of his ſaid majeſty, within a month next after he, according to the ſtatute in that behalf made, did make, or ought to have made his entry or entries of the ſaid beer and ale ſo by him there brewed as aforeſaid, or of any part thereof, or at any time ſince; but the ſame yet remain wholly due and unpaid, contrary to the form of the ſtatute in ſuch caſe made and provided; whereby the ſaid* A. O. *hath forfeited double the value of the ſaid rates, duties, and ſums of money remaining unpaid, as aforeſaid; that is to ſay,* ——— *of like money; and thereupon the ſaid* A. I. *who as well for his ſaid majeſty, as for himſelf, exhibiteth this information, prays the judgment of us the ſaid juſtices in the premiſſes, and that he have one moiety of the ſaid forfeiture, according to the form of the ſtatute in ſuch caſe made; and that the ſaid* A. O. *may be ſummoned to anſwer the premiſſes before us the ſaid juſtices.*

Summons

Summons on the foregoing information.

To Mr. A. O. alehouſekeeper.

Weſtmorland. WE J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace for the ſaid county of* ——— *do hereby give you notice, that* A. I. *gentleman, hath exhibited before us an information againſt you for the ſum of* ——— *being double the value of certain duties of exciſe of beer and ale by you brewed, the ſingle duties whereof (as he alledgeth) you ought long ſince to have paid, but have neglected ſo to do: You are therefore hereby required to appear before us at the houſe of* ——— *at the ſign of the* ——— *in* ——— *in the ſaid county, on the* ——— *day of* ——— *now next enſuing, at* ——— *of the clock of the forenoon of the ſaid day, then and there to anſwer to the ſaid information. And if you ſhall neglect ſo to do, we ſhall proceed as if you were perſonally preſent. And we do further authorize and require Mr.* A. E. *officer of exciſe, or any other officer of exciſe, to ſerve this our ſummons, and to attend us at the time and place laſt mentioned, then and there to make a return thereof to us the ſaid juſtices. Given under our hands and ſeals at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of his ſaid majeſty king* George *the ſecond.*

Note; The officer who ſhall ſerve the ſummons, ought not to be the informer or proſecutor, for this obvious reaſon, becauſe that he, being intitled to a ſhare of the forfeiture, is not a proper witneſs to prove ſuch ſervice; for that would be admitting him to ſwear for himſelf in his own cauſe, which is abhorrent from the nature of our laws.

Information againſt a maltſter for concealing a quantity of malt.

Weſtmorland. BE *it remembred, that this* ——— *day of* ——— *in the* ——— *year of the reign of his majeſty king* George *the ſecond, at* ——— *in the ſaid county,* A. I. *gentleman, in his proper perſon, as well for his ſaid majeſty as for himſelf, exhibiteth to us* J. P. *and* K. P. *eſquires, two of his ſaid majeſty's juſtices of the peace for the ſaid county, reſiding near to the place where the offence herein aftermentioned was committed, as is alledged, a complaint or information, and thereby informeth us, that* A. O. *of* ———*in the ſaid county, during three months now laſt paſt and longer, having been and continued to be, and yet being a maltſter and maker of malt, and not having compounded for the duties of the malt herein aftermentioned, he the ſaid* A. O. *within three months now laſt paſt, at* ———*in the ſaid county, did fraudulently hide, conceal, and convey away malt by him made, that is to ſay,* 12 *buſhels of malt ſo by him made as aforeſaid, from the ſight and view of one* A. E. *being at the ſaid time of the ſaid hiding and concealing thereof, and long before, and ever ſince, the gager appointed to take an*

account

account of the same, and then and there endeavouring to take such account; which hiding, concealing, and conveying away as aforesaid, are contrary to the form of the statute in such case made and provided: Whereby he the said A. O. *for every bushel of the said malt so hid and concealed, hath forfeited* 10 s. *of lawful money of* Great Britain, *amounting in the whole to* 61. *of like money. And thereupon the said* A. I. *who as well for his said majesty as for himself exhibiteth this information, prays the judgment of us the said justices in the premisses, and that he may have one moiety of the said forfeiture, according to the form of the statute in such case made; and that the said* A. O. *may be summoned to answer the said premisses, before us the said justices.*

Summons on the foregoing information.

Westmorland. { To Mr. A. O. maltster.

WE J. P. *and* K. P. *esquires, two of his majesty's justices of the peace, for the county aforesaid, do hereby give you notice, that* A. I. *gentleman, hath exhibited before us an information against you for the penalty of* 61. *by you forfeited, for hiding, concealing, and conveying away* 12 *bushels of malt, from the sight and view of the gager appointed to take an account of the same, against the form of the statute in such case made: You are therefore hereby required to appear before us, at the house of* ——— *at the sign of* ——— *in* ——— *in the said county, on the* ——— *day of* ——— *now next ensuing, at the hour of* ——— *in the forenoon of the same day, then and there to answer to the said information. And if you neglect so to do, we shall proceed as if you were personally present. And we do further authorize and require Mr.* A. E *officer of excise, or any other officer of excise, to serve this our summons, and to attend us at the time and place last mentioned, then and there to make a return thereof to us the said justices. Given under our hands and seals at* ——— *in the said county, this* ——— *day of* ——— *in the* ——— *year of the reign of his said majesty king* George *the second.*

Summons to give evidence.

Westmorland. { To A. W. of ——— yeoman.

WHEREAS *we whose hands and seals are hereunto set, being two of his majesty's justices of the peace in and for the said county, have received information, that* A. O. *of* ——— *in the said county, alehousekeeper, did on the* ——— *day of* ——— *now last past, brew and sell ale and beer, and hath not made entry thereof according to the statute in that behalf made; and that you the said* A. W. *are a material witness to be examined concerning the same: These are therefore to require you to appear before us at the house of* ——— *at the sign of the* ——— *in the said county, on the* ——— *day of* ——— *now next ensuing, at the hour of* ——— *in the forenoon of the same day, to testify your knowledge concerning*

the premisses. Herein fail you not. Given under our hands and seals at ——— in the said county, the ——— day of ——— in the ——— year of the reign of his said majesty king George *the second.*

Judgment against the defendant.

AT *the time and place appointed by our summons on the information within written; that is to say, this ——— day of ——— in the ——— year of the reign of our sovereign lord king* George *the second, at ——— in the county of ——— within mentioned; the within named defendant* A. O. *appeareth, and pleadeth that he is not guilty of the offence within mentioned; but upon a due and full hearing of the proofs made in and concerning the premisses, we do convict him thereof:* [Or,—*sufficient proof being made before us, that the within named defendant* A. O. *hath had due notice of the within written information, and that he was duly summoned to appear before us here this day; and he, in contempt of the said summons, neglecting now to appear, and making default therein; and the fact and offence in the within written information being now fully proved before us, we do convict him thereof:*] *It is therefore now here considered and adjudged by us the said justices, that the said defendant hath forfeited the within mentioned sum of* 50 l. *(which we mitigate and lessen to the sum of* 7 l.) *to be distributed as the law directs. Given under our hands and seals, at ——— aforesaid, this ——— day of ——— in the ——— year of the reign of our said sovereign lord king* George *the second.*

Warrant of distress.

Westmorland. { To A. E. and B. E. officers of excise, and to either of them, and to such other person and persons as they or either of them shall take to his or their assistance.

WE *whose hands and seals are hereunto set, two of his majesty's justices of the peace for the said county of ——— do in his said majesty's name, authorize and command you and every of you, that upon the brewing vessels and utensils for brewing used by* A. O. *of ——— in the said county, innkeeper, in the brewhouse and place where he usually brews, at ——— aforesaid, and upon the goods and chattels of the said* A. O. *you or any of you do levy the sum of* 20 l. *of lawful money of* Great Britain, *by us mitigated and lessened from the sum of* 50 l. *of like money recovered against him by* A. I. *gentleman, who prosecuted as well for our sovereign lord the king, as for himself, for a certain offence committed by the said* A. O. *against the laws and statutes of excise, whereof he the said* A. O. *is convicted before us; And for the levying thereof you are to seize, take, and carry away the said brewing vessels and utensils for brewing, and also the goods and chattels aforesaid; and if in* [*eight*] *days next after such seizure, the said sum of* 20 l. *together with the reasonable charges of taking and keeping the said vessels and utensils, goods and chattels, shall not be paid, then, and in such case (after the expiration of the said ——— days) you are to make sale thereof,*

or

or of so much thereof as shall be sufficient for the purposes herein specified; which said sum of 20 l. *when so levied as aforesaid, you are forthwith to pay to the collector of excise for the collection called* ——— *collection, for the time being; to be by him distributed and answered, according to the statute in such case made and provided: and after levying thereof, the overplus which shall remain of the said brewing vessels and utensils for brewing, and of the said goods and chattels, and of the money arising by such sale, you are to return unto the said* A. O. *upon demand, the reasonable charges of taking, keeping, and selling the said vessels and utensils, goods and chattels, being out of the said overplus money first deducted.*

And all constables and other peace officers of the said county are hereby required to be aiding and assisting to you in the due execution hereof. But in case there cannot be found sufficient to raise the sum last mentioned, then and in such case you are, by a return to this our warrant, forthwith to certify the same to us the said justices. Given under our hands and seals at ——— *in the said county, this* ——— *day of* ——— *in the* ——— *year of his said majesty's reign, and in the year of our lord* 1754.

Return of the want of distress.

Westmorland. I A. E. *one of the officers of his majesty's duties of excise, do hereby certify to* J. P. *and* K. P. *esquires, two of his said majesty's justices of the peace for the said county, that by virtue of a warrant from the said justices to levy the the sum of* 20 l. *upon the brewing vessels and utensils for brewing used by* A. O. *in his usual place of brewing, and upon his goods and chattels, I have made diligent search for such vessels, utensils, goods, and chattels; and that I can find none such; and that I do not know, nor can find, that the said* A. O. *hath any goods or chattels whatsoever. Witness my hand hereunto set, at* ——— *in the said county, this* ——— *day of* ——— *in the year of our lord* 1754.

Warrant of commitment.

Westmorland. { To A. E. and B. E. officers of excise, and to either of them, and to such person or persons as they or either of them shall take to their assistance: And to the gaoler or keeper of such prison to whom these presents shall come.

WHEREAS *we whose hands and seals are hereunto set, two of his majesty's justices of the peace for the said county of* ——— *by our warrant under our hands and seals, bearing date the* ——— *day of* ——— *now instant, did require and command you the said* A. E. *and* B. E. *or either of you, to levy the sum of* 20 l. *therein mentioned on the brewing vessels and utensils for brewing, used by* A. O. *of* ——— *in the said county, innkeeper. and upon the goods and chattels of the said* A. O. *And whereas you the said* A. E. *and* B. E. *by a return and certificate under your hands, bearing date the* ——— *day of* ——— *now instant, have certified to us, that having made diligent search for such brewing vessels and utensils for*

brewing, and for such goods and chattels, you cannot find any whereon to levy the said 20 l. *or any part thereof, and that no such vessels, utensils, goods, or chattels can be found: We therefore the said justices do in his majesty's name hereby authorize, require, and command you, every, or any of you, to take and arrest the body of him the said* A. O. *and forthwith to carry him to the gaol or prison of and for the county or place where you shall so take and arrest him; and him, together with a duplicate of this our warrant, there to deliver into the custody of the gaoler or keeper of the said gaol or prison of and for the said county or place, there to remain in safe custody until he shall satisfy and pay the said sum of* 20 l. *of lawfully money of* Great Britain, *by us mitigated and lessened from the sum of* 50 l. *of like money, by us the said justices adjudged against him, upon an information exhibited against him before us by* A. I. *gentleman, as well on the behalf of his said majesty, as of himself, for a certain offence committed by the said* A. O. *against the laws and statutes of excise, whereof he stands convicted before us the said justices. And all constables, and other his majesty's officers, are hereby authorized and required, to be aiding and assisting to you in the due execution hereof. And the gaoler and gaolers, keeper and keepers of such prison or gaol to which you shall so carry the body of the said* A. O. *is and are hereby authorized and required, to receive into his or their custody the body of the said* A. O. *and the same to keep in safe custody until he shall satisfy and pay the said sum of* 20 l. *before mentioned. And for your, any, or either of your doing as is before respectively directed, this shall be to you, any, or either of you respectively, a sufficient warrant and authority. Given under our hands and seals at* ——— *in the said county, this* ——— *day of* ——— *in the* ——— *year of the reign of his said majesty, and in the year of our lord* 1754.

More precedents it is not necessary to add, since the officers of excise are generally well furnished with printed forms drawn by good advice.

Note; These statutes abovementioned, relating to this title, are but temporary, and have their continuance as follows,

8 *G. c.* 18. Spirituous liquors. By the 8 *G.* 2. *c.* 33. to *June* 1. 1754, and from thence to the end of the then next session of parliament.

5 *G.* 2. *c.* 24. Coffee. By the 25 *G.* 2. *c.* 35. to *March* 25. 1758, and from thence to the end of the then next session of parliament.

6 *G.* 2. *c.* 37. Hop-binds. By the 24 *G.* 2. *c.* 57. to *Sep.* 1. 1757, &c.

15 *G.* 2. *c.* 25. Rum. By the 23 *G.* 2. *c.* 26. to *Sep.* 29. 1757, &c.

19 *G.* 2. *c.* 34. Outlawed smugglers. By the 26 *G.* 2. *c.* 32. to *June* 24. 1758, &c.

Execution.

1. WHERE a perſon attainted hath been at large after his attainder, and afterwards is brought into court and demanded why execution ſhould not be awarded againſt him; if he deny that he is the ſame perſon, it ſhall be immediately tried by a jury returned for that purpoſe. 2 *Haw.* 463.

2. The court may command execution to be done, without any writ. 2 *Haw.* 463.

3. In fixed and ſtated judgments, the law makes no diſtinction between a peer and a commoner, or between a common and ordinary caſe, and one attended with extraordinary circumſtances; for which reaſon it was adjudged in *Felton*'s caſe, who murdered the duke of *Buckingham*, that the court could not order his hand to be cut off, nor make it part of the ſentence that his body ſhould be hanged in chains, but that the body after execution being at the king's diſpoſal, might be hanged in chains, or otherwiſe ordered as the king ſhould think fit. 2 *Haw.* 443.

4. But the king may pardon part of the judgment; as where the judgment is hanging, beheading, imbowelling, and the like, the king may pardon all but the beheading; whereby the judgment is not altered, but part of it remitted. 2 *H. H.* 412.

5. It is clear, that if a man condemned to be hanged, come to life after he be hanged, he ought to be hanged again; for the judgment was not executed till he was dead. 2 *Haw.* 463.

Exigent. See Process.

Extortion.

IT is ſaid, that extortion, in a large ſenſe, ſignifies any oppreſſion under colour of right; but that, in a ſtrict ſenſe, it ſignifies the taking of money by any officer, by colour of his office, either where none at all is due, or not ſo much is due, or where it is not yet due. 1 *Haw.* 170.

And by the ſtatute of the 3 *Ed.* 1. *c.* 26. (which is only in affirmance of the common law) *No ſheriff, nor other the king's officer, ſhall take any reward to do his office, but ſhall be paid of that which they take of the king; and he that ſo doth, ſhall yield twice as much, and ſhall be puniſhed at the king's pleaſure.*

No ſheriff nor other the king's officer] Under theſe words, the law beginning with the *ſheriffs*, are underſtood eſcheators, coroners, bailiffs, gaolers, and other inferior officers of the king, whoſe offices were inſtituted before the making of this act, which do any way concern the adminiſtration or execution of juſtice, or the common good of the ſubject, or for the king's ſervice. 2 *Inſt.* 209.

Alſo the juſtices of the peace, whoſe office was inſtituted after this act, are bound by their oath of office, to take nothing for their office of juſtice of the peace to be done, but of the king, and fees accuſtomed, and coſts limited by ſtatute.

And generally, no publick officer ſhall take any other fees or rewards, for doing any thing relating to his office, than ſome ſtatute in force gives him, or elſe as hath been antiently and accuſtomably taken: and if he do otherwiſe, he is guilty of extortion. *Dalt. c.* 41.

Shall take any reward] Therefore by this ſtatute, they can at this day take no more for doing their office, than hath been ſince allowed to them by authority of parliament 2 *Inſt.* 210.

And all preſcriptions which have been contrary to this ſtatute, and to the common law in affirmance of which it is made, have been always holden to be void. 1 *Haw.* 170.

And it hath been reſolved, that a promiſe to pay them money for the doing of a thing, which the law will not ſuffer them to take any thing for, is merely void. 1 *Haw.* 171.

To do his office] It is not ſaid, that he ſhall take no reward generally, but no reward to do his office: Thus the fee of 20 *d.* called bar fee, time out of mind taken by the ſheriff of every priſoner that is acquitted, is not againſt this ſtatute; for it is not taken for doing his office. 2 *Inſt.* 210.

But there ſeems to be no neceſſity for this diſtinction, for it cannot be intended to be the meaning of the ſtatute to reſtrain the courts of juſtice, in whoſe integrity the law always repoſes the higheſt confidence, from allowing reaſonable fees for the labour and attendance of their officers: for the chief danger of oppreſſion is from officers being left at their liberty to ſet their own rates on their labour, and make their own demands; but there cannot be ſo much fear of theſe abuſes, while they are reſtrained to known and ſtated fees, ſettled by the diſcretion of the courts, which will not ſuffer them to be exceeded, without a proper reſentment. 1 *Haw.* 171.

But in the eccleſiaſtical court, a perſon was libelled againſt for fees, and upon motion a prohibition was granted, for that it was holden that no court hath a power to eſtabliſh fees: the judge of a court may think them reaſonable, but that is not binding; but if on a *quantum meruit* a jury think them reaſonable, then they become eſtabliſhed fees. 1 *Salk.* 333.

The fees in ſeſſions, for traverſing, trying, or diſcharging indictments, diſcharging recognizances, and the like, do vary according to different cuſtoms in different places. *Dalt. c.* 41.

Shall yield twice as much] At the common law this offence is ſeverely puniſhable at the king's ſuit, by fine and impriſonment, and alſo by a removal from the office in the execution whereof it was committed. And this ſtatute doth add a greater penalty than the common law did give; for hereby the plaintiff ſhall recover his double damages. 2 *Inſt.* 210. 1 *Haw.* 171.

And by the 31 *El. c.* 5. Actions for extortion may be laid in any county.

At

At the king's pleasure] That is, by the king's justices, before whom the cause depends. 2 *Inst.* 210.

Indictment for extortion in a gaoler.

THE *jurors for our lord the king, upon their oath present, that* A. O. *late of* ——— *in the said county, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *was taken upon suspicion of having committed a certain felony, by* ——— *constable of* ——— *in the said county, by virtue of a warrant directed to the said* ——— *under the hand and seal of* Robert Bolton, *doctor of laws, then and yet one of the justices of our sovereign lord the king, assigned to keep the peace in the said county, and was on the same day and year committed by him the said* Robert Bolton, *to* A. G. *keeper of the gaol of our said sovereign lord the king at* ——— *in the said county, under the custody of him the said* A. G. *to be safely kept, upon suspicion of the felony aforesaid, and the said* A. O. *was detained in that prison under the custody of the said* A. G. *from the time that he was committed to the said prison for one month from thence next ensuing, upon suspicion of the said felony; nevertheless the said* A. G. *in no wise regarding the statute in that case made, and the penalty therein contained, did on the* ——— *day of* ——— *at* ——— *aforesaid, in the said county, demand and receive* ——— *pounds of lawful money of* Great Britain *of and from the said* A. O. *for ease and favour in the said gaol for the said time, in contempt of our said sovereign lord the king, and against the form of the statute aforesaid, and against the peace of our said sovereign lord the king, his crown and dignity.*

Indictment for extortion of a bailiff.

THE *jurors for our lord the king upon their oath present, that* A. B. *late of* ——— *in the said county, yeoman, being bailiff of the hundred of* ——— *in the said county, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at* ——— *in the said county, by pretext and colour of his said office, did unjustly and by extortion take and extort* 5 s. *of one* A. I. *of* ——— *in the said county, yeoman, one of the freeholders qualified to serve upon juries in the said county, to excuse the said* A. I. *from attending or appearing at the assizes that were then next to be holden in and for the said county, when in fact the said* A. I. *was not returned by the sheriff of the said county in any panel of jurors, and also when indeed no such sum of money was due to the said* A. B. *for his fee for excusing the attendance or appearance of the said* A. I. *at the assizes aforesaid, to the evil example of other offenders, to the great damage of him the said* A. I. *and against the peace of our said sovereign lord the king, his crown and dignity.*

False tokens. See Cheat.

Fast days.

BY the 2 & 3 *Ed.* 6. *c.* 19. for the encouragement of the fisheries, and the increase of cattle; and the 5 *El. c.* 5. intitled, an act touching political constitutions for the maintenance of the navy; and by the 35 *El. c.* 7. it is enacted as follows:

No person shall eat any manner of flesh on any *Friday* or *Saturday*, or the embring days, or in *Lent*, nor on any other day commonly reputed a fish day; on pain of forfeiting 20 *s.* or being imprisoned one month.

And every person in whose house any flesh shall be eaten on fish days, and not disclosing the same to a publick officer having authority to punish the same; shall forfeit 13 *s.* 4 *d.*

Which said forfeitures shall be, one third to the king, one third to the informer, and one third to the common use of the parish where the offence shall be committed; to be levied by the churchwardens after conviction.

Prosecution to be at the assizes or sessions, in three months after the offence committed.

But nothing herein shall extend to any person having the king's licence; or being in great age, and weakness thereby; or sick, or notably hurt; or woman with child, or lying in child bed, for eating of such one kind of flesh as she shall have great lust unto; or in prison; nor to the king's lieutenant, deputy, or captain in his armies, but the same may eat, or license their soldiers to eat flesh for lack of other victual; nor to persons licensed by the archbishop of *Canterbury*.

And such licences shall be on condition, that the person licensed shall within six days after *Candlemass*, pay to the poor box where he dwells, if he be a lord 26 *s.* 8 *d.* a knight 13 *s.* 4 *d.* and all others 6 *s.* 8 *d.*

But sick persons may be licensed by the bishop of the diocese, or by the parson, vicar, or curate of the parish, or (if there be none, or he be wilful) of the next parish; and if the sickness continues above eight days, the licence shall be registred in the church book, with the knowledge of a churchwarden; and the curate shall have 4 *d.* for entry; and the same to endure no longer than such sickness.

And no licence shall extend to the eating any beef at any time of the year, nor veal from *Sep.* 29. to *May* 1. in any year.

And persons licensed (except for sickness) shall for every dish of flesh at their table, have one dish of sea fish.

Fees. See Extortion.

Felo de se. See Homicide.

Felony, Misprision of felony, and Theftbote.

I. Felony.

FELONY is generally ſuppoſed to come from the *Saxon fell*, which ſignifieth fierce, or cruel; of which the verb *fell* ſignifieth to throw down or demoliſh; and the ſubſtantive of that name is uſed to ſignify a mountain rough and uncultivated. But the ſame word, with a little variation, runneth through moſt of the *European* languages, and ſignifieth more generally an offence at large; and the *Saxon* word *fællan* ſignifieth to offend, and *fælniſſe* an offence or *failure:* and although *felony*, as it is now become a technical term, ſignifieth in a more reſtrained ſenſe an offence of an high nature, yet it is not limited to *capital* offences only, but ſtill retaineth ſomewhat of this larger acceptation; for petit larceny is felony, altho' it is not capital.

It would ſwell this title near to the bigneſs of half the book, to ſet down every thing which may be comprehended under this word *felony:* therefore it is neceſſary to refer the conſideration of the ſeveral particular kinds of felonies to their reſpective titles; as for inſtance, *Homicide*, *Robbery*, *Burglary*, *Rape*, *Coin*, *Forgery*, and many others; and eſpecially the law relating to ſtolen goods of all kinds belongeth to title *Larceny*.

The method of bringing a felon to juſtice from the firſt commiſſion of the felony, to his condemnation and execution, is treated of under the ſeveral titles of *Hue and cry*, *Arreſt*, *Examination*, *Bail*, *Commitment*, *Gaol*, *Arraignment*, *Appeal*, *Indictment*, *Mute*, *Confeſſion*, *Jurors*, *Evidence*, *Clergy*, *Judgment*, *Attainder*, *Forfeiture*, *Tranſportation*, *Execution*. And the courſe and whole procedure of trying an offender, is treated of under title *Seſſions*.

So that there is nothing left for this place, but to take notice of one circumſtance which is common to all felonies in general, and that is, concerning the charges of proſecution:

By the 3 *J. c.* 10. The felon ſhall pay the charges of his carrying to gaol, if able; to be levied by diſtreſs by warrant of one juſtice.

And by the ſtatute of the 27 *G.* 2. *c.* 3. if he is not able, the ſame ſhall be paid, by order of ſuch juſtice, by the treaſurer out of the county rates; and in *Middleſex* by the overſeers of the poor where the party was apprehended.

And by the 25 *G.* 2. *c.* 36. the court, before whom any perſon hath been tried and convicted of any grand or petit larceny, or other felony, may at the prayer of the proſecutor, and on conſideration of his circumſtances, order the treaſurer of the county in which the offence ſhall have been committed, to pay him ſuch ſum as they ſhall judge reaſonable, not exceeding the expences he was put to in carrying on the proſecution, with a reaſonable allowance for his time and trouble; and the clerk of aſ-

ſize or of the peace, ſhall forthwith make out ſuch order, and deliver the ſame to the proſecutor, on paying 1 *s.* and the treaſurer ſhall pay the ſame on ſight, and be allowed the ſame in his accounts.

And by the aforeſaid act of the 27 *G.* 2. *c.* 3. When any poor perſon ſhall appear on recognizance to give evidence, the court may order the treaſurer to pay him ſuch ſum as they ſhall think reaſonable, for his time, trouble, and expences; which order the proper officer ſhall make out for the fee of 6 *d.* Except in *Middleſex*, where the ſame ſhall be paid by the overſeers of the poor where the perſon was apprehended.

II. Miſpriſion of felony.

Miſpriſion of felony (from the *French* word *meſpris*, a neglect or contempt, 3 *Inſt.* 36.) is the concealing of a felony which a man knows, but never conſented to: for if he conſented, he is either principal or acceſſary in the felony, and conſequently guilty of miſpriſion of felony and more. 1 *H. H.* 374.

For it is ſaid, that every felony includes miſpriſion of felony, and may be proceeded againſt as a miſpriſion only, if the king pleaſes. 1 *Haw.* 125.

The puniſhment of miſpriſion of felony in a common perſon, is fine and impriſonment; in an officer, as ſheriff or bailiff of liberties, impriſonment for a year, and ranſom at the king's pleaſure, by the ſtatute of 3 *Ed.* 1. *c.* 9.

If any perſon will ſave himſelf from the crime of miſpriſion, he muſt diſcover the offence to a magiſtrate with all ſpeed that he can. 3 *Inſt.* 140.

Miſpriſion, in a larger ſenſe, is uſed to ſignify every conſiderable miſdemeanor, which hath not a certain name given to it in the law.

III. Theftbote.

Theftbote (from the *Saxon* words *theft*, and *bote*, boot or amends) is, where one not only knows of a felony, but takes his goods again, or other amends, not to proſecute. 1 *Haw.* 125.

But the bare taking of one's own goods again, which have been ſtolen, is no offence, unleſs ſome favour be ſhewn to the thief. 1 *Haw.* 125.

This offence is very nearly allied to felony, and is ſaid to have been anciently puniſhed as ſuch; but at this day it is puniſhable only with ranſom and impriſonment, unleſs it were accompanied with ſome degree of maintenance given to the felon, wich makes the party an acceſſary after the fact. 1 *Haw.* 125.

Feme covert. See **Wife.**

Fences. See **Wood.**

Fern. Burning of it in foreſts. See **Burning.**

Fire. See **Burning.**

Fire in London.

THE acts relating thereto are,
6 *An.* *c.* 31.
7 *An.* *c.* 17.
11 *G.* *c.* 28.

Fireworks.

1. IT ſhall not be lawful for any perſon to make or cauſe to be made, or to ſell or expoſe to ſale, any ſquibs, rockets, ſerpents, or other fireworks, or any caſes, moulds, or other implements for making the ſame; or to permit the ſame to be caſt or fired from his houſe or other place thereto belonging, into any publick ſtreet or road; or to throw or fire, or be aiding in throwing or firing the ſame, in any publick ſtreet, houſe, ſhop, river, or highway; and every ſuch offence ſhall be adjudged a common nuſance. 9 & 10 *W.* *c.* 7. *ſ.* 1. Fireworks a nuſance.

2. And if any perſon ſhall make or cauſe to be made, or give, ſell, or offer to ſale, any ſquibs, rockets, ſerpents, or other fireworks, or any caſes, moulds, or other implements for making the ſame; he ſhall on conviction before one juſtice, or chief magiſtrate, by confeſſion, or oath of two witneſſes, forfeit 5 *l.* half to the poor, and half to the proſecutor; to be levied by diſtreſs, by warrant of ſuch juſtice or chief magiſtrate. 9 & 10 *W.* *c.* 7. *ſ.* 2. Making or ſelling rockets.

3. And if any perſon ſhall permit any the ſame to be caſt or fired, from his houſe or other place thereto belonging, into any publick ſtreet or road, or any other houſe or place; he ſhall forfeit 20 *s.* in like manner. 9 & 10 *W.* *c.* 7. *ſ.* 2. Suffering rockets to be fired.

4. And if any perſon ſhall caſt or fire, or be aiding in caſting or firing any the ſame, into any publick ſtreet, houſe, ſhop, river or highway; he ſhall forfeit 20 *s.* in like manner: and if he ſhall not immediately on conviction pay to the juſtice the ſaid forfeiture for the uſes aforeſaid, he ſhall commit him to the houſe of correction to be kept to hard labour for any time not exceeding one month, unleſs he ſhall ſooner pay the forfeiture. 9 & 10 *W.* *c.* 7. *ſ.* 3. Firing rockets.

5. But nothing herein ſhall extend to the officers of the ordnance, or artillery company. 9 & 10 *W.* *c.* 7. *ſ.* 4, 5. Exception.

Fiſh and fiſhing. See **Game.**
Fiſh ſalted. See **Exciſe.**
Flight. See **Forfeiture.**

Forcible entry and detainer.

FORCE, in the common law, is most commonly taken in ill part, for unlawful violence. 1 *Inst.* 161.

It seems that at the common law, a man disseised of any lands or tenements, if he could not prevail by fair means, might lawfully regain the possession thereof by force, unless he were put to a necessity of bringing his action, by having neglected to re enter in due time: And it seems certain, that even at this day, he who is wrongfully dispossessed of his *goods*, may justify the retaking of them by force from the wrong doer, if he refuse to re deliver them; for the violence which happens thro' the resistance of the wrongful possessor, being originally owing to his own fault, gives him no just cause of complaint, inasmuch as he might have prevented it by doing as he ought. 1 *Haw.* 140.

But this indulgence of the common law, in suffering persons to regain the lands they were unlawfully deprived of, having been found by experience to be very prejudicial to the publick peace, by giving an opportunity to powerful men under the pretence of feigned titles, forcibly to eject their weaker neighbours, and also by force to retain their wrongful possessions, it was thought necessary by many severe laws to restrain all persons from the use of such violent methods of doing themselves justice. 1 *Haw.* 141.

However even at this day, in an *action* of forcible entry grounded on those laws, if the defendant make himself a title which is found for him, he shall be dismissed without any inquiry concerning the force; for howsoever he may be punishable *at the king's suit*, for doing what is prohibited by statute, as a contemner of the laws, and disturber of the peace, yet he shall not be liable to pay any damages for it to the plaintiff, whose injustice gave him the provocation in that manner to right himself. 1 *Haw.* 141.

Since therefore offences of this nature are made such, not by the common law, but by statute (after having premised, that *they who keep possession with force, in lands and tenements, whereof they or their ancestors, or they whose estate they have in the same, have continued their possession in the same, by three whole years next before without interruption, shall not be indamaged by force of any of the statutes concerning forcible entry*, 8 H. 6. c. 9. s. 7. 1 Haw. 152.) I shall consider those several statutes, with the interpretation that hath been put upon them, under the following heads:

I. What

I. What is a forcible entry.
II. What is a forcible detainer.
III. How the ſame are puniſhable by action at law.
IV. How puniſhable at the general ſeſſions.
V. How puniſhable by one juſtice.
VI. How puniſhable on a certiorari.
VII. How puniſhable as a riot.

I. What is a forcible entry.

By the 5 *R.* 2. *c.* 8. *None ſhall make any enty into any lands or tenements (or benefices of holy church,* 15 R. 2. c. 2. *or other poſſeſſions,* 8 H. 6. c. 9. ſ. 2.) *but where entry is given by the law; and in ſuch caſe not with ſtrong hand, nor with multitude of people, but only in peaceable and eaſy manner; on pain of impriſonment and ranſom at the king's will.*

Or other poſſeſſions] It ſeems clear, that no one can come within the danger of theſe ſtatutes, by a violence offered to another in reſpect of a *way*, or ſuch like eaſement, which is no poſſeſſion. And there ſeems to be no good authority, that an indictment will lie in this caſe for a *common*, or *office*. 1 *Haw.* 146.

Not with ſtrong hand, nor with multitude of people] It ſeems certain, that if one who pretends a title to lands, barely go over them, either with or without a great number of attendants, armed or unarmed, in his way to the church or market, or for ſuch like purpoſe, without doing any act, which either expreſsly or impliedly amounts to a claim of ſuch lands, he cannot be ſaid to make an entry thereinto. 1 *Haw.* 144.

But it ſeemeth, that if a perſon enter into another man's houſe, or ground, either with apparent violence offered to the perſon of any other, or furniſhed with weapons, or company, which may offer fear, tho' it be but to cut, or take away another man's corn, graſs, or other goods, or to fell or crop wood, or do any other like treſpaſs, and tho' he do not put the party out of his poſſeſſion, yet it ſeemeth to be a forcible entry. *Dalt. c.* 126.

But if the entry were peaceable, and after ſuch entry made, they cut or take away any other man's corn, graſs, wood, or other goods, without apparent violence or force; tho' ſuch acts are counted a diſſeiſin with force, yet they are not puniſhable as forcible entries. *Dalt. c.* 126.

But if he enter peaceably, and there ſhall by force or violence cut or take away any corn, graſs, or wood, or ſhall forcibly or wrongfully carry away any other goods there being; this ſeemeth to be a forcible entry puniſhable by theſe ſtatutes. *Dalt. c.* 126.

So alſo ſhall thoſe be guilty of a forcible entry, who having an eſtate in land, by a defeaſible title, continue with force in the poſ-

ſeſſion

ſeſſion thereof, after a claim made by one who had a right of entry thereto. 1 *Haw.* 145.

But he who barely agrees to a forcible entry made to his uſe, without his knowledge or privity, ſhall not be adjudged to make an entry within theſe ſtatutes, becauſe he no way concurred in, or promoted the force. 1 *Haw.* 145.

And, in general, it ſeemeth clear, that to denominate the entry forcible, it ought to be accompanied with ſome circumſtances of actual *violence*, or *terror*; and therefore that an entry which hath no other force than ſuch as is implied by the law, in every treſpaſs whatſoever, is not within theſe ſtatutes. 1 *Haw.* 145.

As to the matter of *violence*; it ſeems to be agreed, that an entry may be forcible, not only in reſpect of a violence actually done to the perſon of a man, as by beating him if he refuſe to relinquiſh his poſſeſſion, but alſo in reſpect of any other kind of violence in the manner of the entry, as by breaking open the doors of a houſe, whether any perſon be in it or not, eſpecially if it be a dwelling houſe, and perhaps alſo by any act of outrage after the entry, as by carrying away the party's goods; but it ſeems that an entry is not forcible, by the bare drawing up a latch, or pulling back the bolt of a door, there being no appearance therein of being done by *ſtrong hand*, or *multitude of people*; and it hath been holden, that an entry into a houſe thro' a window, or by opening a door with a key, is not forcible. 1 *Haw.* 145.

In reſpect of the circumſtances of *terror*; it is to be obſerved, that wherever a man, either by his behaviour or ſpeech, at the time of his entry, gives thoſe who are in poſſeſſion juſt cauſe to fear, that he will do them ſome bodily hurt, if they will not give way to him, his entry is eſteemed forcible, whether he cauſe ſuch a terror, by carrying with him ſuch an unuſual number of attendants, or by arming himſelf in ſuch a manner, as plainly intimates a deſign, or by actually threatning to kill, maim, or beat thoſe who ſhall continue in poſſeſſion, or by giving out ſuch ſpeeches, as plainly imply a purpoſe of uſing force, as if one ſay that he will keep his poſſeſſion in ſpite of all men, or the like. 1 *Haw.* 145.

But it ſeems that no entry ſhall be judged forcible, from any threatning to ſpoil another's *goods*, or to deſtroy his cattle, or to do him any other ſuch like damage, which is not perſonal. 1 *Haw.* 146.

However it is clear, that it may be committed by a ſingle perſon, as well as by twenty. 1 *Haw.* 146.

But nevertheleſs all thoſe who accompany a man, when he makes a forcible entry, ſhall be adjudged to enter with him, whether they actually come upon the lands or not. 1 *Haw.* 144.

II. What is a forcible detainer.

It ſeemeth certain, that the ſame circumſtances of violence or terror which will make an entry forcible, will make a detainer forcible

forcible alſo. And a detainer may be forcible, whether the entry were forcible or not. 1 *Haw.* 146.

III. How they are puniſhable by action at law.

If any perſon be put out or diſſeiſed of any lands or tenements in forcible manner, or put out peaceably, and after holden out with ſtrong hand; the party grieved ſhall have aſſize of novel diſſeiſin, or a writ of treſpaſs againſt the diſſeiſor; and if he recovers, he ſhall have treble damages, and the defendant moreover ſhall make fine and ranſom to the king. 8 H. 6. c. 9. ſ. 6.

The party grieved ſhall have aſſize &c] But this action, being at the ſuit of the party, and only for the right, is only where the entry of the defendant was not lawful; for if a man entreth with force, where his entry is lawful, he ſhall not be puniſhed by way of action; but yet he may be indicted upon the ſtatute, for the indictment is for the force, and for the king, and he ſhall make fine to the king, altho' his right be never ſo good. *Dalt. c.* 129.

Treble damages] And this he ſhall recover, as well for the mean occupation, as for the firſt entry: And albeit he ſhall recover treble damages, yet he ſhall recover coſts, which ſhall be trebled alſo; for the word *damages* includeth coſts of ſuit. 1 *Inſt.* 257.

IV. How puniſhable at the general ſeſſions.

The party grieved, if he will loſe the benefit of his treble damages and coſts, may be aided and have the aſſiſtance of the juſtices at the general ſeſſions, by way of indictment (A) on the ſtatute of 8 *H.* 6. Which being found there, he ſhall be reſtored to his poſſeſſion, by a writ of reſtitution granted out of the ſame court to the ſheriff. *Dalt. c.* 129.

In the caption of which indictment, it will be ſufficient to ſay, *juſtices aſſigned to keep the peace of our lord the king*, without ſhewing that they have authority to hear and determine felonies and treſpaſſes; for the ſtatute enables all juſtices of the peace, as ſuch, to take ſuch indictments. 1 *Haw.* 147.

And the tenement in which the force was made, muſt be deſcribed with convenient certainty; and muſt ſet forth that the defendant actually entred; and ouſted the party grieved; and continueth his poſſeſſion at the time of finding the indictment; otherwiſe he cannot have reſtitution, becauſe it doth not appear that he needeth it. 1 *Haw.* 147, 149, 150.

But if a man's wife, children, or ſervants do continue in the houſe or upon the land, he is not ouſted of his poſſeſſion; but his cattle being upon the ground, do not preſerve his poſſeſſion. *Dalt. c.* 132.

An indictment for forcible entry was quaſhed, for not ſetting forth, that the party was ſeiſed or diſſeiſed, or what eſtate he had in the tenement; for if he had only a term for years, then the entry

entry muſt be laid, into the freehold of *A.* in the poſſeſſion of *B.* 3 *Salk.* 169.

V. How puniſhable by one juſtice.

1. For a more ſpeedy remedy, the party grieved may complain to any one juſtice; or to a mayor, ſheriff, or bailiff, within their liberties. 8 *H.* 6. *c.* 9.

2. But altho' one juſtice alone may proceed in ſuch caſes, yet it may be adviſable for him, if the time for viewing the force will ſuffer it, to take to his aſſiſtance one or two more juſtices.

3. Concerning which power of one juſtice, it is enacted as follows:

After complaint made to ſuch juſtice, by the party grieved, of a forcible entry made into lands, tenements, or other poſſeſſions, or forcible holding thereof, he ſhall within a convenient time, at the coſts of the party grieved (without any examining or ſtanding upon the right or title of either party) *take ſufficient power of the county, and go to the place where ſuch force is made.* 15 R. 2. c. 2. 8 H. 6. c. 9. ſ. 2. Dalt. c. 44.

Complaint —— *by the party grieved*] Yet theſe words do not inforce any neceſſity of ſuch a complaint; for it is holden, that the juſtice may and ought to proceed, upon any information or knowledge thereof whatſoever, tho' no complaint at all be brought unto him, by any party grieved thereby. *Lamb.* 147.

Power of the county] All people of the county, as well the ſheriffs as other, ſhall be attendant on the juſtices, to arreſt the offenders; on pain of impriſonment and fine to the king. 15 *R.* 2. *c.* 2.

4. And if the doors be ſhut, and they within the houſe ſhall deny the juſtice to enter, it ſeems he may break open the houſe, to remove the force. *Dalt. c.* 44.

5. And if after ſuch entry made, the juſtice *ſhall find ſuch force; he ſhall cauſe the offenders to be arreſted.* 15 R. 2. c. 2. 8 H. 6. c. 9. ſ. 2.

6. He ſhall alſo *take away their weapons and armour, and cauſe them to be appraiſed, and after to be anſwered to the king as forfeited, or the value thereof* 2 Ed. 3 c. 3.

7. Alſo ſuch juſtice ought to *make a record* (B) *of ſuch force by him viewed*; which record ſhall be a ſufficient conviction of the offenders, and the parties ſhall not be allowed to traverſe it: And this record, being made out of the ſeſſions, by a particular juſtice, may be kept by him; or he may make it indented, and certify the one part into the king's bench, or leave it with the clerk of the peace; and the other part he may keep himſelf. For this view of the force by the juſtice, being a judge of record, maketh his record thereof, in the judgment of the law, as ſtrong and effectual, as if the offenders had confeſſed the force before him; and touching the reſtraining of traverſe, more effectual, than if the force had been found by a jury, upon the evidence of others. (That is,

as

as to the fine and imprisonment, but not as to restitution.) 15 *R.* 2. *c.* 2. *Dalt. c.* 44.

8. And the offenders, being arrested (as before is said), *shall be put in the next gaol* (C) *there to abide convict by the record of the same justice, until they have made fine and ransom to the king.* 15 R. 2. c. 2.

Shall be put in the next gaol] It is said, that the justice hath no power to commit the offender to gaol, unless he do it upon his own view of the fact, and not upon the jury finding the same afterwards. *Dalt. c.* 44. 1 *Haw.* 142.

And if such offenders, being in the house at the coming of the justice, shall make no resistance, nor make shew of any force, then the justice cannot arrest or remove them at all upon such view. *Dalt. c.* 44.

But howsoever, if the force be found afterwards, by the inquiry of the jury, the justice may bind the offenders to the peace; and if they be gone, he may make his warrant to take them, and may after send them to the gaol, until they have found sureties for the peace. *Dalt. c.* 44.

Note; Mr. *Dalton* in this place says *good behaviour*, which I have presumed to alter to *the peace*, as deeming it much the safer; and not being sufficiently satisfied concerning the power of a justice of the peace to bind to the good behaviour in the like cases, which power Mr. *Dalton* hath enlarged more than all other authors, without any assistance from the commission of the peace, or any act of parliament, other than had been for above 200 years before.

Until they have made fine] *H.* 1 *G.* 2. *K.* and Sir *Edm. Ellewel.* He was brought up upon a *habeas corpus*, with a return of the cause of his commitment, which was upon a conviction of forcible entry and detainer. And it being moved to discharge him upon exceptions to the commitment, the court refused to enter into the consideration of them, till the conviction was likewise regularly removed before them. But by consent he was bailed in the mean time. And this term the conviction being before the court, it appeared that there was no fine set by the justices, and it was therefore moved to be quashed. It was agreed on both sides, that there should be a fine; but it was insisted, that it being now before the king's bench by a *certiorari*, they might set the fine. But by the court, We are not to execute the judgment of an inferior court. The conviction is to be upon view, and they who view the nature of the force are the propereſt judges what fine to set; and though a *certiorari* should come before the fine is set, yet it would be no contempt in the justices to compleat their judgment by setting one. *Lambard* indeed was of opinion, that the justices could not set the fine at all; but upon what foundation we can never imagine. The justices are not bound to do it upon the spot, but may take a reasonable time to consider of the fine; because by the words of the act, the commitment is to be, till he has paid the fine. The conviction must be quashed,

and the defendant discharged. *Str.* 794. L. *Raym.* 1515. *Sess. C. V.* 1. 289.

And the same was likewise solemnly resolved in *Leighton*'s case; and that the justice may assess the same, either before the conviction or after. 1 *Haw.* 142.

And the fine must be assessed upon every offender severally, and not upon them jointly; and the justice ought to estreat the fine, and to send the estreat into the exchequer, that from thence the sheriff may be commanded to levy it for his majesty's use. *Dalt. c.* 44.

But upon payment of the fine to the sheriff, or upon sureties found (by recognizance) for the payment thereof, it seemeth that the justice may deliver the offenders out of prison again at his pleasure. *Dalt. c.* 44.

9 And so much concerning removing the force: But the party ousted cannot be restored to his possession by the justice's view of the force; nor unless the same force be found by the inquiry of a jury.

Concerning which it is enacted as follows: *And tho' that the persons making such entry be present, or else departed before the coming of the justice; he may notwithstanding in some good town next to the tenements so entred, or in some other convenient place by his discretion* (and that, tho' he go not to see the place where the force is; *Dalt. c.* 44.) *have power to inquire by the people of the county, as well of them that make such forcible entry, as of them which hold the same with force.* 8 H. 6. c. 9. s. 3.

10. In order to which, *the justice shall make his precept* (D) *to the sheriff, commanding him in the king's behalf, to cause to come before him, sufficient and indifferent persons, dwelling next about the lands so entred, to inquire of such entries; whereof every man shall have lands or tenements of* 40 s. *a year, above reprizes. And the sheriff shall return issues on every of them, at the day of the first precept returnable* 20 s. *and at the second day* 40 s. *and at the third day* 100 s. *and at every day after double. And the sheriff making default, shall on conviction before the same justice, or before the judge of assize, forfeit* 20 l. *half to the king, and half to him who shall sue, with costs; and moreover shall make fine and ransom to the king.* 8 H. 6. c. 9. s. 4, 5.

Before the same justice] And the justice may proceed against the sheriff for this default, either by bill at the suit of the party, or by indictment at the suit of the king. *Dalt. c.* 44.

11. And the defendant also, if he is not present, ought to be called to answer for himself; for it is implied by natural justice, in the construction of all laws, that no one ought to suffer any prejudice thereby, without having first an opportunity of defending himself. 1 *Haw.* 154.

12. And it seems to be settled at this day, that if the defendant tender a *traverse* of the force, the justice ought not to make any restitution, till the traverse be tried. 1 *Haw.* 154.

13. The defendant may also by the 31 *El. c.* 11. plead *three years possession*; whereby it is enacted, that *no restitution upon an*

indictment of forcible entry, or holding with force, shall be made, if the person indicted have had the occupation, or been in quiet possession for three years together next before the indictment found, and his estate therein not determined; and restitution shall stay till that be tried: and if it is found against the party indicted, he shall pay such costs and damages as the judges or justices shall assess; to be recovered as costs and damages in judgments on other actions.

And it hath been holden, that the plea of such possession is good, without shewing under what title, or of what estate such possession was; because it is not the title, but the possession only, which is material in this case. 1 *Haw.* 152.

14. And it was holden by the court in *Leighton*'s case, that if the defendant shall either traverse the entry or the force, or plead that he has been three years in possession, the justice may summon a jury for the trial of such traverse, for it is impossible to determine it upon view; and if the justice have no power to try it, it would be easy for any one to elude the statute by the tender of such a traverse, and therefore by a necessary construction the justice must needs have this power as incidental to what is expressly given him. 1 *Haw.* 142.

15. And this traverse must be tendred in writing, and not by a bare denial of the fact in words; for thereupon a *venire facias* must be awarded, a jury returned, the issue tried, a verdict found, and judgment given, and costs and damages awarded; and there must be a record, which must be in writing, to do all this, and not a verbal plea. *Dalt. c.* 133. 1 *Haw.* 154.

16. Upon which traverse tendred, the justice shall cause a new jury to be returned by the sheriff, to try the traverse; which may be done the next day, but not the same day. *Dalt. c.* 133.

17. And it seemeth, that he who tendreth the traverse, shall bear all the charges of the trial; and not the king, or the party prosecuting. *Dalt. c.* 133.

18. And *if such forcible entry or detainer be found* (E) *before such justice, then the said justice shall cause to reseise* (F) *the lands and tenements so entred or holden, and shall restore the party put out, to the full possession of the same.* 8 H. 6. c. 9. s. 3.

The said justice] It seems to be agreed, that no other justices of the peace, except those before whom the indictment shall be found, shall have any power either at the sessions or out of it, to make any award of restitution. 1 *Haw.* 152.

Shall cause to reseise] And the justice may break open the house by force, to reseise the same; and so may the sheriff do, having the justice's warrant. *Dalt. c.* 44.

Reseise] That is, shall remove the force, by putting out all such offenders as shall be found in the house, or upon the lands, that entred or held with force. *Dalt. c.* 130.

And shall restore the party put out] And this he may do in his own proper person; or he may make his warrant to the sheriff to do it. *Dalt. c.* 44. 1 *Haw.* 151, 2.

19. And by 21 *J. c.* 15. it is enacted, *that ſuch judges, juſtices, or juſtice of the peace, as may give reſtitution unto tenants of any eſtate of freehold, may give the like unto tenants for term of years, tenants by copy of court roll, guardians by knight's ſervice, tenants by-elegit, ſtatute merchant and ſtaple, of lands or tenements by them ſo holden, which ſhall be entred upon by force, or holden from them by force.*

VI. How puniſhable on a certiorari.

Although regularly the juſtices only who were preſent at the inquiry, and when the indictment was found, ought to award reſtitution; yet if the record of the preſentment or indictment ſhall be certified by the juſtice or juſtices into the king's bench, or the ſame preſentment or indictment be removed and certified thither by *certiorari*, the juſtices of that court may award a writ of reſtitution to the ſheriff, to reſtore poſſeſſion to the party expelled: for the juſtices of the king's bench have a ſupreme authority in all caſes of the crown. *Dalt. c.* 44.

Alſo where upon a removal of the proceedings into the king's bench the conviction ſhall be quaſhed, the court will order reſtitution to the party injured. As in the caſe of *K.* and *Jones, M.* 8 *G.* A conviction of forcible entry was quaſhed for the old exception of *meſſuage* or *tenement*, by reaſon of the uncertainty; but the reſtitution was oppoſed, on an affidavit that the party's title (which was by leaſe) was expired ſince the conviction. But the court ſaid, they had no diſcretionary power in this caſe, but were bound to award reſtitution on quaſhing the conviction. *Str.* 474.

VII. How puniſhable as a riot.

If a forcible entry or detainer ſhall be made by three perſons or more, it is alſo a riot, and may be proceeded againſt as ſuch, if no inquiry hath before been made of the force. *Dalt. c.* 44.

A. Indictment for a forcible entry and detainer at common law.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— *in the county aforeſaid, gentleman, and* B. O. *late of the ſame, yeoman, together with divers other malefactors and diſturbers of the peace of our ſaid lord the king (whoſe names to the jurors aforeſaid are yet unknown) on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *with force and arms, at* ——— *aforeſaid, in the county aforeſaid, unlawfully and injuriouſly did enter into a certain barn and a certain orchard, then and there being in the poſſeſſion of one* A. I. *and that the ſaid* A. O. *and* B. O. *together with the ſaid other malefactors, then and there, with force and arms, unlawfully and injuriouſly did expel, amove, and put out the ſaid* A. I. *from the*

the possession of the said barn and orchard, and the said A. I. *so as aforesaid expelled, amoved, and put out from the possession of the said barn and orchard, then and there, with force and arms, unlawfully and injuriously did keep out, and still do keep out, to the great damage of him the said* A. I. *and against the peace of our said lord the king, his crown and dignity.*

Indictment on the statute.

Westmorland. THE *jurors for our lord the king upon their oath present, that* A. I. *late of the parish of* ——— *in the county aforesaid, gentleman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *was possessed of a certain messuage, with the appurtenances, situate, lying, and being in* ——— *in the parish aforesaid, in the county aforesaid, for a certain term of years, then and still to come, and unexpired, and being so possessed thereof, one* A. O. *late of* ——— *in the said county, yeoman, afterwards, to wit, the said* ——— *day of* ——— *in the year aforesaid, into the said messuage, with the appurtenances aforesaid, in* ——— *aforesaid, in the parish and county aforesaid, with force and arms, and with strong hand, unlawfully did enter, and the said* A. I. *from the peaceable possession of the said messuage, with the appurtenances aforesaid, then and there with force and arms, and with strong hand, unlawfully did expel and put out; and the said* A. I. *from the possession thereof, so as aforesaid, with force and arms, and with strong hand, being unlawfully expelled and put out, the said* A. O. *him the said* A. I. *from the aforesaid* ——— *day of* ——— *in the year aforesaid, until the day of the taking this inquisition, from the possession of the said messuage, with the appurtenances aforesaid, with force and arms, and with strong hand, unlawfully and injuriously then and there did keep out, and still doth keep out, to the great damage of the said* A. I. *against the peace of our said lord the king, and against the form of the statutes in that case made and provided.*

Note; If it is a freehold, then the party must be said to be *seised* thereof in his demesne as of fee; and consequently he must be thereof *disseised:* otherwise if it is of a lesser estate, of which he is not properly said to be *seised*, but possessed thereof, at the will of the lord, according to the custom of the manor, or the like, and then he must be *expelled, ejected, amoved,* or the like.

B. Record of a forcible detainer upon view.

Note, That the books upon the office of a justice of the peace do generally set forth, that the record ought to be in the present tense, and not in the time past (and herewith do accord the adjudged cases in the court of king's bench, *Str.* 443.); yet nevertheless they do all exhibit the form of a record in the time past, and not in the present: Therefore I have taken the liberty to alter the same, from the record in L. *Raymond* of the conviction of

Sir *Edm. Elwell* aforesaid, and others; adding the fine thereunto, for the want of which that conviction was quashed. And I have given the form of a record of a forcible *detainer*, rather than of a forcible *entry*, because the justice for the most part cannot be supposed to be present at the entry, as not having knowledge thereof until after the entry is made.

Kent, to wit. BE *it remembred, that on the* 15*th day of* Sep. *in the first year of the reign of our sovereign lord* George *the second of* Great Britain, France, *and* Ireland, *king, defender of the faith, and so forth, at* Beckingham *in the county of* Kent *aforesaid,* Eliz. Elwell *complained to us* E. B. P. B. *and* W. P. *three of the justices of our said lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, that Sir* Edm. Elwell, *late of* London, *baronet,* I. B. *and* D. M. *into the messuage of her the said* E. E. *being the mansion house of her the said* E. E. *called* Langley house, *situate within the parish of* Beckingham *aforesaid, did enter, and her the said* E. E. *of the messuage aforesaid, whereof the same* E. E. *at the time of the entry aforesaid was seised as of the freehold of her the said* E. E. *for the term of her life, unlawfully ejected, expelled, and amoved, and the said messuage from her the said* El. E. *unlawfully, with strong hand and armed power, do yet hold and from her detain, against the form of the statute in such case made and provided; whereupon the same* El. E. *then, to wit, on the said* 15*th day of* Sep. *at the parish of* B *aforesaid, prayeth of us, so as aforesaid being justices, to her in this behalf that a due remedy be provided, according to the form of the statute aforesaid: Which complaint and prayer by us the aforesaid justices being heard, we the aforesaid* E. B *baronet,* P. B. *and* W. P. *esquires, justices aforesaid, to the messuage aforesaid personally have come, and do then and there find and see the aforesaid* Edm. E. I. B. *and* D. M. *the aforesaid messuage, with force and arms, unlawfully, with strong hand and armed power, detaining, against the form of the statute in such case made and provided, according as she the same* El. E. *so as is aforesaid hath unto us complained: Therefore it is considered by us the aforesaid justices, that the aforesaid* Edmund Elwell, Joseph Billers, *and* Daniel Monty, *of the detaining aforesaid with strong hand, by our own proper view then and there as is aforesaid had, are convicted, and every of them is convicted, according to the form of the statute aforesaid; Whereupon we the justices aforesaid, upon every of the aforesaid* Ed. E. J. B. *and* D. M. *do set and impose severally a fine of* 10l. *of good and lawful money of* Great Britain, *to be paid by them and every of them severally to our said sovereign lord the king, for the said offences; and do cause them, and every of them, then and there to be arrested; and the same* Ed. E. J. B. *and* D. M. *being convicted, and every of them being convicted upon our own proper view, of the detaining aforesaid, with strong hand as is aforesaid, by us the aforesaid justices are committed, and every of them is committed, to the gaol of our said lord the king, at* Maidstone *in the county of* Kent *aforesaid, being the next gaol to the messuage aforesaid,*

said, there to abide respectively, until they shall have paid their said several fines respectively, to our said lord the king, for their respective offences aforesaid. Concerning which the premisses aforesaid, we do make this our record. In witness whereof, we the aforesaid E. B. *baronet,* P. B. *and* W. P. *esquires, the justices aforesaid, to this record our hands and seals do set, at the parish of* B. *aforesaid, in the county of* Kent *aforesaid, on the* 15*th day of* Sep. *in the first year aforesaid of the reign of our said sovereign lord the now king.*

E. Bettenson.
P. Burrel.
W. Passenger.

C. Mittimus for forcible detainer.

Westmorland. EDWARD Hassel, *esquire, one of the justices of our sovereign lord the king's majesty, assigned to keep the peace within the said county of* W. *and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; To the keeper of his majesty's gaol at* ——— *in the said county, and to his deputy and deputies there, and to every of them, greeting. Whereas upon complaint made unto me this present day, by* A. I. *of* ——— *in the said county, yeoman, I went immediately to the dwelling house of the said* A. I. *at* ——— *aforesaid in the said county, and there found* A. O. *late of* ——— *labourer,* B. O. *late of the same, weaver, and* C. O. *late of* ——— *butcher, forcibly, with strong hand and armed power, holding the said house, against the peace of our said lord the king, and against the form of the statute in such case made and provided: Therefore I send you, by the bringers hereof, the bodies of the said* A. O. B. O. *and* C. O. *convicted of the said forcible holding, by mine own view, testimony, and record; commanding you in his said majesty's name, to receive them into your said gaol, and there safely to keep them, and every of them respectively, until they shall have respectively paid the several sum of* 10*l. of good and lawful money of* Great Britain, *to our said sovereign lord the king, which I have set and imposed upon every of them separately, for a fine and ransom for their said trespasses respectively. Herein fail you not, at the peril that may follow thereof. Given at* ——— *aforesaid, in the county aforesaid, under my seal, the* ——— *day of* ——— *in the* ——— *year of the reign of our said sovereign lord king* George *the second.*

Note; By the forms in all the books, all the offenders stand committed until all have paid, so as that the first shall not be discharged on payment of his own fine, but continue until all the rest have paid likewise; which seems unreasonable, and is not warranted by the statute.

D. Precept to the sheriff to return a jury.

Westmorland. HENRY Aglionby, *esquire, one of the justices of our lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; To the sheriff of the said county, greeting: On behalf of our said lord the king, I command you, that you cause to come before me at* ——— *in the county aforesaid, on the* ——— *day of* ——— *next ensuing, twenty-four sufficient and indifferent men, of the neighbourhood of* ——— *aforesaid, in the county aforesaid, every of whom shall have lands or tenements of* 40 s. *yearly at the least, above reprizes, to inquire upon their oaths for our said lord the king, of a certain entry made with strong hand (as it is said) into the messuage of one* A. I. *at* ——— *aforesaid, in the county aforesaid, against the form of the statute in such case made and provided. And you are to return upon every of the jurors by you in this behalf to be impanelled,* 20 s. *of issues at the aforesaid day. And have you then there this precept. And this you shall in no wise omit, upon the peril that shall thereof ensue. Witness the said* J. P. *at* ——— *in the county aforesaid, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

The jurors oath.

YOU *shall true inquiry and presentment make of all such things as shall come before you, concerning a forcible entry* [or, *detainer*] *said to have been lately committed in the dwelling house of* ——— *yeoman, at* ——— *in this county; you shall spare no one for favour or affection, nor grieve any one for hatred or ill-will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you: So help you god.*

The oath that A. F. *your foreman hath taken on his part, you and every of you shall truly observe and keep on your parts: So help you god.*

E. The inquisition, indictment, or finding of the jury.

Westmorland. AN *inquisition for our sovereign lord the king, indented and taken at* ——— *in the said county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *by the oaths of* ——— *good and lawful men of the said county, before* J. P. *esquire, one of the justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the same county committed, who say upon their oaths aforesaid, that* A. I. *of* ——— *aforesaid, yeoman, long since lawfully and peaceably was seised in his demesne as of fee* [if it is not freehold, then say,

say, *possessed*] *of and in one messuage, with the appurtenances, in* ——— *aforesaid, in the county aforesaid, and his said possession* [*and seisin*] *so continued until* A. O. *late of* ——— *yeoman,* B. O. *late of the same, yeoman, and* C. O. *late of the same, yeoman, and other malefactors unknown, the* ——— *day of* ——— *now last past, with strong hand and armed power, into the messuage aforesaid, with the appurtenances aforesaid, did enter, and him the said* A. I. *thereof disseised, and with strong hand expelled; and him the said* A. I. *so disseised and expelled from the said messuage with the appurtenances aforesaid, from the said* ——— *day of* ——— *until the day of the taking of this inquisition, with like strong hand and armed power did keep out, and do yet keep out, to the great disturbance of the peace of our said lord the king, and against the form of the statute in such case made and provided.*

We whose names are hereunto set, being the jurors abovesaid, do upon the evidences now produced before us, find the inquisition aforesaid true.

A. B.
C. D. &c.

F. Warrant to the sheriff for restitution.

Westmorland. HENRY Fletcher, *esquire, one of the justices of our sovereign lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; To the sheriff of the said county, greeting: Whereas by an inquisition taken before me the justice aforesaid, at* ——— *in the county aforesaid, on this present* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *upon the oaths of* ——— *and by virtue of the statutes made and provided in cases of forcible entry and detainer, it is found, that* A. O. *late of* ——— *yeoman, and* B. O. *late of* ——— *yeoman, on the* ——— *day of* ——— *now last past, into a certain messuage, with the appurtenances, of* A. I. *of* ——— *aforesaid, in the county aforesaid, gentleman, situate, lying, and being at* ——— *aforesaid, in the county aforesaid, with force and arms did enter, and him the said* A. I. *thereof then with strong hand did disseise and drive out, and him the said* A. I. *thus driven out from the aforesaid messuage with the appurtenances, from the* ——— *day of* ——— *aforesaid, to this present day of the taking of the said inquisition, with strong hand and armed force did keep out, and do yet keep out, as by the inquisition aforesaid more fully appeareth of record: Therefore on the behalf of our said sovereign lord the king, I charge and command you, that taking with you the power of the county (if it be needful) you go to the said messuage and other the premisses, and the same with the appurtenances you cause to be reseised, and that you cause the said* A. I. *to be restored and put into his full possession thereof, according as he, before the entry aforesaid was seised, according to the form of the said statutes. And this you shall in no wise omit, on the penalty thereon incumbent. Given under my hand and seal at* ——— *in the*

said

said county, the ——— *day of* ——— *in the* ——— *year of the reign of* ———.

Foreign service.

Artificers.

1. BY the 5 *G. c.* 27. If any person shall contract with, entice, or endeavour to persuade any manufacturer or artificer in wool, iron, steel, brass, or any other metal, clockmaker, watchmaker, or any other artificer or manufacturer, to go out of this kingdom, into any foreign country out of his majesty's dominions, and shall (on prosecution in 12 months) be convicted thereof on indictment or information, in the courts at *Westminster*, assizes, or sessions of the county where the offence shall be committed; he shall for the first offence be fined not exceeding 100 *l.* and be imprisoned for three months, and until the fine be paid; for the second offence, shall be fined at the discretion of the court, and be imprisoned 12 months, and till the fine is paid. *s.* 1, 2.

And if any subject, being such artificer or manufacturer, shall go into any country out of his majesty's dominions, to exercise or teach any the said manufactories to foreigners, or if any subject who shall be in any such foreign country, and there exercising any the said manufactories, shall not return in six months next after warning be given him, by the ambassador, minister, or consul, or person authorized by him, or by a secretary of state, and from thenceforth continually inhabit within this realm; he shall be incapable of any legacy, or of being executor, or administrator, and of taking any lands, by descent, devise, or purchase, and forfeit his lands and goods, and be deemed an alien, and out of the king's protection. *s.* 3.

And on complaint on oath before a justice, that any person is endeavouring to seduce or draw away any such manufacturer or artificer, or that he hath contracted or is preparing to go out of the kingdom; he may issue his warrant to bring such person before him or some other justice; and if it shall appear to such justice, by confession, or the oath of one witness, that such person was guilty of any the said offences, he may bind him over to the next assizes or sessions, to answer the premisses; and if he shall upon indictment be there convicted of any such promise or contract, or preparation to go abroad beyond the seas, he shall give such security not to depart out of the realm, as such court shall think reasonable, and be imprisoned until such security be given. *s.* 4.

And by the 23 *G.* 2. *c.* 13. If any person shall contract with, or endeavour to persuade or seduce any artificer in the manufactures of *Great Britain*, to go into any foreign country, not belonging to the crown of *Great Britain*; and shall be thereof convicted, in twelve months, in the king's bench, or at the assizes; he shall for every such person forfeit 500 *l.* and be imprisoned

priſoned in the common gaol for twelve months, and till payment of the forfeiture; and for a ſecond or other ſubſequent offence, ſhall forfeit 1000*l.* and be impriſoned two years, and till payment. *ſ.* 1, 2.

And if any perſon ſhall put on board any veſſel not bound directly to ſome of the *Britiſh* dominions, any tools or utenſils, or part thereof, proper for either the woollen or ſilk manufactures; he ſhall forfeit the ſame, and 200*l.* *id. ſ.* 3.

And any officer of the cuſtoms may ſeize, and ſecure in ſome of the king's warehouſes, all ſuch tools and utenſils as ſhall be found on board any ſuch veſſel; and the ſame, after condemnation, ſhall be publickly ſold. *id. ſ.* 4.

And if the maſter or captain ſhall knowingly permit any the ſaid tools or utenſils to be put on board his ſhip; he ſhall forfeit 100*l.* and if it is a king's ſhip, he ſhall alſo forfeit his office, and be incapable of any office under the crown. *id. ſ.* 5.

And if any officer of the cuſtoms ſhall take any entry outward, or ſign any ſufferance for ſhipping or exporting any the ſaid tools, or knowingly permit the ſame to be done; he ſhall forfeit 100*l.* and his office, and be incapable of any office under the crown. *id. ſ.* 6.

All which ſaid penalties, on this act, ſhall be half to the king, and half to him that ſhall proſecute. *id. ſ.* 7.

2. By the 9 *G.* 2. *c.* 30. If any ſubject ſhall inliſt, or enter himſelf; or if any perſon ſhall procure any ſubject to inliſt or enter himſelf, or hire or retain any ſubject, with intent to cauſe him to inliſt or enter himſelf; or procure any ſubject to go beyond the ſeas or imbark with intent and in order to be inliſted to ſerve any foreign prince, ſtate, or potentate, as a ſoldier, without the king's leave under his ſign manual; he ſhall be guilty of felony without benefit of clergy. *ſ.* 1. Soldiers.

And offences committed out of the realm may be tried in any county in *England.* *ſ.* 2.

But if any perſon ſo inliſted, or inticed to go beyond the ſeas in order to be inliſted, as a non commiſſion officer or private ſoldier, in any foreign ſervice, ſhall in fourteen days voluntarily diſcover upon oath, before any juſtice or other civil magiſtrate, the perſon by whom he was inliſted or inticed, ſo as he be convicted; he ſhall be indemnified. *ſ.* 3.

Foreſtalling, ingroſſing, and regrating.

FOreſtalling (*foreſtællan*, or *foreſtallan*) in the Engliſh Saxon ſignifieth properly to *market before the publick*, or to *prevent the publick market*; and metaphorically, to *intercept* in general: and ſeemeth derived from *fore*, which is the ſame as *before*, and *ſtalle* a ſtanding place or department; from whence ſprang the ancient Derivation.

cient word *ſtallage*, which ſignifieth money paid for erecting a ſtall or ſtand, for the ſelling of goods in a fair or market:

Ingroſſing is from *in*, and *groſs*, great or whole:

And *regrating*, from *re*, again, and the French *grater*, to *grate* or ſcrape; and ſignifieth the ſcraping or dreſſing of cloth or other goods, in order for ſelling the ſame again.

I ſhall treat, firſt, concerning theſe offences at the common law; and, ſecondly, concerning the ſame by ſtatute.

I. Concerning theſe offences at common law.

Theſe offences at common law.

1. At the common law, all endeavours whatſoever to enhance the common price of any merchandize, and all kinds of practices which have an apparent tendency thereto, whether by ſpreading falſe rumours, or by buying things in a market before the accuſtomed hour, or by buying and ſelling again the ſame thing in the ſame market, or by any other ſuch like devices, are highly criminal, and puniſhable by fine and impriſonment. 1 *Haw.* 234. 5.

2. By the common law, a merchant bringing victuals into the realm, may ſell the ſame in groſs; but no perſon can lawfully buy within the realm any merchandize in groſs, and ſell the ſame in groſs again, without being liable to be indicted for the ſame. 3 *Inſt.* 196.

3. And the bare ingroſſing of a whole commodity, with an intent to ſell it at an unreaſonable price, is an offence indictable at common law, whether any part thereof be ſold by the ingroſſer or not. 1 *Haw.* 235.

4. And ſo jealous is the common law of all practices of this kind, that it will not ſuffer corn to be ſold in the ſheaf; perhaps for this reaſon, becauſe by ſuch means the market is in effect foreſtalled. 1 *Haw.* 235.

5. Anciently the ingroſſer and regrater were comprehended under the word foreſtaller; but now they are diſtinguiſhed by the following ſtatute.

By ſtatute:

II. Concerning theſe offences by ſtatute.

Foreſtalling, what.

1. *Whoſoever ſhall buy, or cauſe to be bought, any merchandize, victual, or any other thing whatſoever, coming by land or by water toward any market or fair, to be ſold in the ſame, or coming toward any city, port, haven, creek, or road, from any parts beyond the ſea to be ſold; or make any bargain, contract or promiſe, for the having or buying the ſame, or any part thereof, ſo coming as is aforeſaid, before the ſaid merchandize, victuals, or other things ſhall be in the market, fair, city, port, haven, creek, or road, ready to be ſold; or ſhall make any motion by word, letter, meſſage, or otherwiſe, to any perſon for the inhancing of the price, or dearer ſelling of any thing abovementioned; or elſe diſſuade, move, or ſtir any perſon coming to the market or fair, to abſtain or forbear to bring or convey any of the things above rehearſed, to any market, fair, city, port,*

port, haven, creek, or road to be ſold, as aforeſaid,——ſhall be deemed a foreſtaller. (A) 5 & 6 Ed. 6. c. 14. ſ. 1.

2. *Whoſoever ſhall ingroſs, or get into his hands by buying, contracting, or promiſe-taking, other than by demiſe or grant, or leaſe of land or tythe, any corn growing in the fields, or any other corn or grain, butter, cheeſe, fiſh, or other dead victuals whatſoever, to the intent to ſell the ſame again, ſhall be deemed an unlawful ingroſſer.* (B) 5 & 6 Ed. 6. c. 14. ſ. 3. Ingroſſing, what.

And it is ſaid not to be ſufficient in an indictment or information, to ſay that the defendant bought ſo much goods, but the words of the ſtatute are to be purſued, which are——*ſhall ingroſs or get into his hands by buying.* But it is not neceſſary to ſet forth, that the defendant did not come by it, by a demiſe of land, or the like; but the defendant, if he have any ſuch matter to alledge, muſt give it in evidence. 1 *Haw.* 237, 238.

3. *Whoſoever ſhall by any means regrate, obtain, or get into his hands or poſſeſſion, in a fair or market, any corn, wine, fiſh, butter, cheeſe, candles, tallow, ſheep, lambs, calves, ſwine, pigs, geeſe, capons, hens, chickens, pigeons, conies, or other dead victual whatſoever, that ſhall be brought to any fair or market to be ſold, and do ſell the ſame again in any fair or market holden or kept in the ſame place, or in any other fair or market within four miles thereof, ſhall be deemed a regrater.* (C) 5 & 6 Ed. 6. c. 14. ſ. 2. Regrating, what.

4. And if any ſhall be guilty of any the ſaid offences, he ſhall for the firſt offence be impriſoned two months, and forfeit the value of the goods; for the ſecond offence, be impriſoned half a year, and forfeit double value; and for the third offence, ſhall be ſet on the pillory, forfeit all his goods, and be impriſoned during the king's pleaſure. 5 & 6 *Ed.* 6. *c.* 14. *ſ.* 4, 5, 6. Penalty.

Half the ſaid forfeitures to go to the king, and half to him that will ſue, in two years after the offence. *id. ſ.* 9, 14.

And the ſeſſions may hear and determine the ſame, by inquiſition, preſentment, bill, or information, and by examination of two witneſſes, and may make proceſs thereupon, as tho' they were indicted; and eſtreat the king's moiety, and award execution of the other moiety for the party, by *fieri facias*, or *capias*, as the courts at *Weſtminſter* may do. *id. ſ.* 10.

5. From hence it ſeems clearly to follow, as well as from the general rules of law, that no information for any of the ſaid offences againſt the ſaid ſtatute can be good, without ſhewing in certain the quantity of the thing for which the penalty is ſuppoſed to be incurred, not only becauſe otherwiſe the judgment to be given on ſuch an information can never be pleaded in bar of any other, becauſe it cannot appear that both of them were brought for the ſame thing; but alſo, becauſe it cannot appear to the court what forfeiture the defendant ought to incur, unleſs the extent of the offence be ſpecially ſet forth. 1 *Haw.* 238. Form of the indictment or information.

6. But nothing in the act abovementioned ſhall extend to the buying of any ſuch thing (otherwiſe than by foreſtalling) by any fiſhmonger, butcher, or poulterer, as concerns their trade, who Exceptions and limitations.

ſhall

ſhall ſell the ſame again upon reaſonanable prices by retail; nor to the buying of wine, or other dead victual, by any innholder or victualler, to retail the ſame in his houſe; nor to the buying of any dried or ſalted fiſh (not foreſtalled), and ſold for reaſonable prices; nor to the buying of any corn, fiſh, butter, or cheeſe, by perſons duly licenſed, and not foreſtalling. 5 & 6 *Ed.* 6. *c.* 14. *ſ.* 7.

Neither ſhall it extend to wines, oils, ſugars, ſpices, currans, nor other foreign victuals; fiſh and ſalt only excepted. 13 *El.* *c.* 25. *ſ.* 21.

And by the 15 *C.* 2. *c.* 7. When the quarter of wheat (*Winchester* meaſure) doth not exceed 48 *s.* rye 32 *s.* barley or malt 28 *s.* buck wheat 28 *s.* oats 13 *s.* 4 *d.* peaſe or beans 32 *s.* any perſon (not foreſtalling, nor ſelling the ſame again in the ſame market in three months) may buy ſuch corn, at or under ſuch price, and lay it up, and ſell the ſame again, without incurring any penalty. *ſ.* 4.

Alſo, it hath been reſolved, that ſuch *victual* only, as is neceſſary for the food of man, is within the aforeſaid ſtatute of 5 & 6 *Ed.* 6. and therefore that apples and cherries, and ſuch like fruit are not: but that ſalt is a victual within the meaning of it. 1 *Haw.* 237.

Information may be laid in any county.

7. By 31 *El.* *c.* 5. which ordains that informations for offences againſt penal ſtatutes, muſt be laid in the proper county, it is provided, that nevertheleſs an information on the ſaid ſtatute of *Ed.* 6. againſt foreſtalling, ingroſſing, or regrating, where the penalty ſhall appear to be 20 *l.* or above, may be laid out of the proper county, and in any other county at the pleaſure of the informer.

A. Indictment for foreſtalling.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of the pariſh of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at the pariſh aforeſaid, in the county aforeſaid, did buy and cauſe to be bought of and from one* A. S. *twenty oxen, for the ſum of* 200 l. *of lawful money of* Great Britain, *as he the ſaid* A. S. *then and there was driving the ſaid twenty oxen towards the market of* M. *to ſell the ſaid twenty oxen in the ſaid market, and before the ſaid twenty oxen were brought into the ſaid market, where the ſame ſhould be ſold; in contempt of our ſaid lord the king and his laws; to the evil example of all others in the like caſe offending, againſt the peace of our ſaid lord the king, his crown and dignity, and againſt the form of the ſtatute in that caſe made and provided.*

B. Indictment for ingrossing.

Westmorland. THE *jurors for our lord the king upon their oath present, that* A. O. *late of* ——— *in the county aforesaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at* ——— *aforesaid, in the county aforesaid, did ingross and get into his hands, by buying of and from one* A. S. 50 *quarters of wheat, to the intent to sell the same again; to the evil example of all others in the like case offending, against the peace of our said lord the king, his crown and dignity, and against the form of the statute in that case made and provided.*

C. Indictment for regrating.

Westmorland. THE *jurors for our lord the king upon their oath present, that* A. O. *late of the parish of* ——— *in the county aforesaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at the parish aforesaid, in the county aforesaid, to wit, in a certain market then and there holden, did buy, obtain, and get into his hands and possession ten geese and twenty chickens, of and from one* A. S. *for the sum of* 30s. *of lawful money of* Great Britain *(the said geese and chickens then being brought to the said market by the said* A. S. *to be sold); and that afterwards, to wit, on the same* ——— *day of* ——— *in the year aforesaid, he the said* A. O. *at the parish aforesaid, in the county aforesaid, in the said market there, unlawfully did regrate the said geese and chickens, and sell the same again to one* A. B. *for the sum of* 40s. *of like lawful money of* Great Britain, *in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, against the peace of our said lord the king, and against the form of the statute in that case made and provided.*

Forests. See Game.

Forfeiture.

The forfeitures for particular offences may be found under their respective titles; here it is treated of forfeitures in general.

I. Of forfeiture of lands and goods.
II. Of loss of dower.
III. Of corruption of blood.

I. Of forfeiture of lands and goods.

Forfeiture of lands.

1. IT seems agreed, that by the common law, all lands of inheritance, whereof the offender was seised in his own right, and also all rights of entry to lands in the hands of a wrong doer, are forfeited to the king, by an attainder of high treason, and to the lord of whom they are immediately holden, by an attainder of petit treason or felony. 2 *Haw.* 448.

But it seems clear, that the lord cannot enter into the lands holden of him, upon an escheat for petit treason or felony, without a special grant, till it appear by due process, that the king hath had his prerogative of the year, day, and waste. 2 *Haw.* 448.

Concerning which year, day, and waste, it is enacted by the 17 *Ed.* 2. *c.* 16. that the king shall have the goods of all felons attainted, and fugitives, wheresoever they be found. And if they have freehold, it shall be forthwith taken into the king's hands, and the king shall have all profits of the same by one year and one day; and the land shall be wasted and destroyed in the houses, woods, and gardens, and in all manner of things, belonging to the same land. And after the king hath had the year, day, and waste, the land shall be restored to the chief lord of the fee, unless that he fine before with the king, for the year, day, and waste.

Forfeiture of goods.

2. As to forfeiture of goods, it seems agreed, that all things whatsoever, which are comprehended under the notion of a personal estate, whether they be in action or possession, which the party hath, or is intitled to, in his own right, and not as executor or administrator to another, are liable to such forfeiture, in the following cases:

(1) Upon a conviction of treason or felony. 2 *Haw.* 450.

(2) Upon a flight found before the coroner, upon view of a dead body. *id.*

(3) Upon an acquittal of a capital felony, if the party is found to have fled. *id.*

(4) Also a person indicted of petit larceny, and acquitted, yet if it be found he fled for it, forfeits his goods, as in case of grand larceny. 1 *H. H.* 530. 2 *Haw.* 451.

But it is certain that the party may in all cases, except that of the coroner's inquest, traverse the finding of the flight. Also it seems agreed, that the particulars of the goods found to be forfeited may be also traversed. 2 *Haw.* 451.

(5) Upon a presentment by the oaths of 12 men, that a person arrested for treason or felony, fled from, or resisted those who had him in custody, and was killed by them in the pursuit or scuffle. 2 *Haw.* 451.

(6) By being waived or left by a felon in his flight, whereby he forfeits the goods so waived, whether they be his own, or the goods of others stolen by him, which shall not be restored to the right owners but upon a proper prosecution. 2 *Haw.* 451.

(7) Also, a convict within clergy, forfeits all his goods, tho' he be burnt in the hand; yet thereby he becomes capable of purchasing other goods. 2 *H. H.* 388, 389.

But on burning in the hand, he ought to be immediately restored to possession of his lands. 2 *H. H.* 389.

Forfeiture upon outlawry.

3. Upon outlawry in treason or felony, the offender shall lose and forfeit as much as if he had appeared, and judgment had been given against him, as long as the outlawry is in force. *Wood* 1112.

And those that tarry till the exigent, in treason, felony, or petit larceny, forfeit their goods, tho' they render themselves to justice, and are acquitted; for it was a flight in law. *Wood* 1112.

Forfeiture in se defendendo.

4. But where the killing a man in his own defence is in the law no felony, there is no forfeiture, unless he fled; for that is a distinct forfeiture, altho' the party be not guilty of the fact. 1 *H. H.* 493.

To what time the forfeiture shall relate.

5. It seems agreed, that the forfeiture, upon an attainder either of treason or felony, shall have relation to the time of the offence, for the avoiding of all subsequent alienations of the *lands*; but to the time of the conviction or flight found only, as to *chattels*; unless the party were killed in flying or resisting, in which case it is said, that the forfeiture of the chattels shall relate to the time of the offence. 2 *Haw.* 454.

What is to be done with the felon's goods before forfeiture.

6. But tho' the goods of an offender be not forfeited, till the conviction, or flight found by inquest, yet whether they may be seized upon the offence committed, hath been controverted; concerning which Lord *Hale* saith thus:

It seemeth clear, that at the common law, if a man had committed felony or treason, or tho' possibly he had committed none, yet if he had been indicted, the sheriff, coroner, or other officer, could not seize and carry away the goods of the offender or party accused:

Again, he could not in that case have removed the goods out of the custody of the offender or party accused, and deliver them over to the constables or to the *villata*, to answer for them:

But if the party were indicted, the sheriff or other officer might make a simple seizure of them only to inventory and appraise them, and leave them to the custody of the servants or bailiff of the party indicted, in case he would give security against their

being imbeziled, or in default thereof he might deliver them to the conſtable or vill to be anſwerable for them, but yet ſo that the party accuſed and his family have ſufficient out of them for their livelihood and maintenance:

And poſſibly the ſame law was, tho' he were not indicted, but *de facto* had committed a felony, but with this difference, if he had been indicted, this kind of ſeizure might have been made, whether he committed the felony or not:

But in caſe there were no indictment, then it is at the peril of him that ſeizeth, if he committed not the felony:

And then as to the ſtatute of 1 *R.* 3. *c.* 3. it is as follows; *No ſheriff or other perſon ſhall take or ſeize the goods of any perſon arreſted or impriſoned for ſuſpicion of felony, before he be convicted or attainted, or before the goods be otherwiſe forfeited; on pain of double value to the party grieved:*

Mr. *Stamford* thinks this is but in affirmance of the common law, only that it gives a penalty; but it ſeems to be ſomewhat more than ſo, for this prohibits the ſeizure of the goods of a party impriſoned, tho' he were alſo indicted, but not yet convicted, where unqueſtionably the common law allowed ſuch a ſeizure, if the party or his friends did not ſecure the forthcoming of the goods, where the party was indicted:

But upon this ſtatute theſe things are conſiderable; 1. As to perſons at large, it ſeems to me (ſays he) that if they flie not, there can no ſeizure at all made, whether they are indicted or not; for the ſtatute did not intend a greater privilege to a party impriſoned, than to him that is at large. 2. That if he be at large, and *fly* for it, yet his goods cannot be ſeized and removed, whether he be indicted or not indicted. 3. That if he be indicted, and at large, yet the goods cannot be removed, but only viewed, appraiſed, and inventoried, in the houſe or place where they lie:

And yet I know not how it comes to paſs, ſays he, the uſe of ſeizing the goods of perſons accuſed of felony, tho' impriſoned or not impriſoned, hath ſo far obtained notwithſtanding this ſtatute, that it paſſeth for law and common practice, as well by conſtables, ſheriffs, and other the king's officers, as by lords of franchiſes, that there is nothing more uſual:

Upon the whole, he ſays, that the opinion of my Lord *Coke*, in his 3 *Inſt.* 228. hath truly ſtated the law, at leaſt as it ſtands upon the ſtatute of 1 *R.* 3. *viz.* 1. That *before* the indictment, the goods of any perſon cannot be ſearched, inventoried, or in any ſort ſeized. 2. That *after* the indictment, they cannot be ſeized and removed, or taken away, before conviction or attainder:

But then it may be ſaid, to what purpoſe may they be ſearched and inventoried after indictment, if they may not be removed, but are equally liable to imbeziling as before:

I think (he ſays) he is not bound to find ſureties, neither hath the officer at this day any power to remove them in default of ſureties, and commit them to the vill, but only to inventory them, and leave them where he found them (unleſs in caſe of a ſecond

capias on the 25 *Ed.* 3. *c.* 14.) for the prisoner or party indicted may sell them *bona fide*; and if he may do so, the vendee may take them, and the *villata* cannot refuse the delivering of them to the vendee, tho' the goods had been delivered to them:

But there is this advantage by the viewing and appraising, that thereby the king is ascertained what the goods are, and may pursue them that take or imbezil them, by information (if the party happen to be convict) and try the property with them, whether they are really sold, or sold only fraudulently without valuable consideration to prevent the forfeiture. 1 *H. H.* 363, 4, 5, 6, 7.

II. Of loss of dower.

1. Albeit a person shall be attainted of felony, yet his wife shall not forfeit her dower. 1 *Ed.* 6. *c.* 12. *s.* 17. Forfeiture of dower in felony.

2. But on his attainder of any treason, she shall forfeit her dower. 5 & 6 *Ed.* 6. *c.* 11. *s.* 13. But in some kinds of treason (particularly with regard to the coin) there is a special saving of the wife's dower by statute. In treason.

III. Of corruption of blood.

1. It is agreed, that by an attainder of treason or felony, the blood is so far stained or corrupted, that the party loses all the nobility or gentility he might have had before, and becomes ignoble. 2 *Haw.* 456. Corruption of blood.

2. Also, that he can neither inherit as heir to an ancestor, nor have an heir. 2 *Haw.* 456.

3. But the king's pardon, tho' it doth not restore the blood, yet as to issues born after, hath the effect of a restitution. 1 *H. H.* 358.

4. But restitution of blood in its true nature and extent, can only be by act of parliament. 1 *H. H.* 358. 2 *Haw.* 458.

Forgery.

1. FORGERY is an offence at common law, and an offence also by statute.

2. Forgery at the common law, is an offence in falsly and fraudulently making or altering any matter of record, or any other authentick matter of a publick nature; as a parish register, or any deed, will, privy seal, certificate of holy orders, protection of a parliament man, and the like. 1 *Haw.* 182, 184.

As for writings of an inferior nature, as private letters, and such like, the counterfeiting of them is not properly forgery; therefore in some cases it may be more safe to prosecute such offenders for a misdemeanor, as cheats. For by reason of the uncertainty of opinions, concerning proper forgeries at common law, indictments are generally brought upon some of the following statutes,

tutes, and very few at common law. But if the indictment is at common law, and the offender is convicted, he may be pilloried, fined, and imprisoned. *Wood* 710. 1 *Haw.* 184.

But as to the power of justices of the peace in this matter, Mr. *Hawkins* says, it hath been settled of late, that they have no jurisdiction over forgery at the common law; the principal reason of which resolution (he says) as he apprehended, was, that inasmuch as the chief end of the institution of the office of these justices was for the preservation of the peace against personal wrongs and open violence, and the word *trespass* in its most proper and natural sense, is taken for such kind of injuries, it shall be understood in that sense only in the commission, or at the most to extend to such other offences only as have a direct and immediate tendency to cause such breaches of the peace, as libels, and such like, which on this account have been adjudged indictable before justices of the peace. 2 *Haw.* 40. 1 *Salk.* 406.

But Mr. *Barlow* says nevertheless, that it seemeth clear, that a justice of the peace may take an information thereof, bind over the informers, examine the offender, certify his examination to the proper judges, and commit him to prison in order to abide his trial. *Barl.* 244.

3. The statutes that make forgery an offence are these that follow:

The first is that famous statute of the 5 *El. c.* 14. which by an example worthy to be imitated, doth (in order to prevent confusion) repeal all former statutes against forgery. By this it is enacted, that *if any person upon his own head and imagination, or by false conspiracy and fraud with others, shall wittingly, subtilly, and falsly forge or make, or subtilly cause, or willingly assent to be forged or made, any false deed, charter, or writing sealed, court roll, or the will of any person in writing, to the intent that the state of freehold or inheritance of any person, of any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or interest of any person in the same may be molested, troubled, defeated, recovered, or charged; or shall pronounce, publish, or shew forth in evidence the same as true, knowing the same to be false or forged, to the intent as above (except lawyers or attornies for their clients, not being privy to the forgery); and shall be thereof convicted, either upon action at the suit of the party, or otherwise according to the order and due course of the laws of this realm,——he shall pay to the party double costs and damages, and be set in the pillory, and have both his ears cut off, and his nostrils slit and seared with a hot iron, and shall forfeit the profits of his lands during life, and be imprisoned also during life.* s. 2.

And all justices of oyer and terminer, and justices of assize, shall have power to inquire of, hear, and determine all offences in this act. s. 10.

Upon his own head] When the proceedings were in latin, *super proprium suum caput* was allowed to be good upon an indictment on this statute; the law having more regard that the statute be strictly pursued, than rendred into proper latin. 1 *Haw.* 187.

Forge-

Forge or make] Making a second deed, and antedating it, with intent to make it take place of a former deed, is forgery within this statute. 3 *Inst.* 167.

Or subtilly cause, or willingly assent] To *cause*, is to procure or counsel one to forge; to *assent*, is to give his assent or agreement afterwards, to the procurement or counsel of another; to *consent*, is to agree at the time of the procurement or counsel, and such is in law a procurer. 3 *Inst.* 169.

But Lord *Hale* says, that an *assent* after the fact committed, makes not the party assenting guilty or principal in the forging; but it must be a precedent, or concomitant assent. 1 *H. H.* 684.

False deed, charter, or writing] It seems to be no way material, whether a forged instrument be made in such a manner, that if it were in truth such as it is counterfeited for, it would be of validity or not; and upon this ground it hath been adjudged, that the forgery of a protection in the name of a member of parliament, who in truth at the time was not a member, is as much a crime as if he were. 1 *Haw.* 184.

Writing sealed] These are large words; and the making of a false customary of a manor in writing under seal, containing divers false customs, to the disherison of the lord of the manor, and that the same had been allowed and permitted by the lord of the manor, which was also false, was resolved to be within these words *a false writing sealed.* 3 *Inst.* 171.

Sealed] It is required that the deed, charter, or writing must be sealed, that is, have some impression upon the wax; for wax, without an impression is not a seal. 3 *Inst.* 169.

Court roll, or will] Here are two writings which need not be sealed, because they may take effect without any seal, for that they be no deeds; and no writing can have the force of a deed, without a seal. 3 *Inst.* 170.

Will] If any person which writeth the will of a sick man, inserteth a clause therein concerning the devise of lands, without any direction of the devisor, this is forgery, altho' he did not forge the whole will. 3 *Inst.* 170.

To the intent that the state of freehold or inheritance of any person, of any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or interest of any person in the same may be molested, troubled, defeated, recovered, or charged] *E.* 4 *G.* 2. *K.* and *Japhet Crooke.* The defendant was convicted on this statute for forging a lease and release. And the indictment sets forth, that *Garbut* and his wife were seised in fee of certain messuages, lands, and tenements called *Jawick* in the parish of *Clackton* in *Essex*, and that the defendant intending to molest them and their interest in the premisses, forged a lease and release as from *Garbut* and his wife, whereby they are supposed for a valuable consideration to convey to him "all that park called *Jawick* park in the parish of "*Clackton* in *Essex*, containing eight miles in circumference, with "all the deer, woods, &c, thereto belonging." It was moved in arrest of judgment, that the premisses supposed to be conveyed,

were so materially different from those which were really the estate of *Garbut* and his wife, which was houses, lands, and tenements; that it was impossible this conveyance ever could molest or disturb them: if it was a true deed, it could not pass their lands at law, for want of a proper description; and though where lands are improperly described, a court of equity will oblige the vendor to convey them by proper words, yet that is only where there is a previous contract for a sale, and they do it as carrying that contract into execution. The court for several terms inclined strongly with the objection; but this term *Raymond* Ch. J. declared that they were all of opinion to over-rule it: for by the words of the act, it is not necessary that there should be a charge or a possibility of a charge; it is sufficient that it be done with that intent, and the jury have found that it was done with intent to molest *Garbut* and his wife in the possession of their lands. Accordingly judgment was given for the king, and the defendant had sentence to undergo the punishment appointed by the act for forging a deed, and the same was executed upon him at *Charing-cross*. *Str.* 901.

Pronounce or publish] That is, when one by words or writing pronounceth or publisheth the deed to any other as true. 3 *Inst.* 171.

Knowing the same to be forged] This knowledge may come by two means; either of his own knowledge, or of the relation of another; for if another tell him it is forged, and he publish it afterwards as true, and it prove to be forged indeed, he is in danger of this statute. 3 *Inst.* 171. 1 *Haw.* 187.

But Lord *Hale* says, that tho' such a relation may be an evidence of fact to prove his knowledge, yet it is not conclusive; for perchance there might be circumstances of fact, that might make the person relating it, or his relation, not credible: So that the *knowing* must be upon the whole matter left to the jury, upon the circumstances of the case. 1 *H. H.* 685.

Justices of oyer and terminer] Albeit justices of the peace, by their commission, have power to hear and determine felonies and trespasses, yet they are not included under the name of justices of oyer and terminer; for justices of oyer and terminer are known by one distinct name, and justices of the peace by another. 3 *Inst.* 103.

And by the same statute it is further enacted, that *if any person, upon his own head or imagination, or by false conspiration or fraud with any other, shall wittingly, subtilly, and falsly forge or make, or cause or assent to be made and forged any false charter, deed, or writing, to the intent that any person may have or claim any estate or interest for term of years in any manors, lands, tenements, or hereditaments, not being copyhold, or any annuity in fee simple, fee-tail, or for term of life, lives, or years; or any obligation, or bill obligatory, or any acquittance, release, or other discharge of any debt, account, action, suit, demand, or other thing personal; or shall pronounce, publish, or give the same in evidence as true, knowing the same to be false and forged, he shall, on conviction in like manner, pay to the party double costs and damages, and be set*

on

on the pillory, and have one of his ears cut off, and be imprisoned for a year. s. 3.

Obligation or bill obligatory] The forgery of a deed of gift of mere personal chattels, is not within this statute. 1 *Haw.* 186.

And *if after verdict, the plaintiff shall release the judgment or execution, or suffer a discontinuance, it shall only discharge his own costs and damages, and not the other punishments.* s. 6.

And by the same statute it is further enacted, that *if any person shall after conviction offend again in any of the ways above-mentioned, he shall be guilty of felony without benefit of clergy.* s. 7, 8.

4. Thus stood the matter upon the statute of 5 *El.* Afterwards by many subsequent statutes (several of which were occasional only, and adapted to the particular juncture and circumstances of the time in which they were made, but which are referred to and enforced by the subsequent statutes on the same subject) divers other forgeries were made felony without benefit of clergy for the first offence; and others had other punishments assigned them: Which are as follows:

It shall be felony without benefit of clergy, to forge or counterfeit

(1) Any bank bills, or notes, or the seal of the governor and company of the bank of *England.* 7 & 8 *W.* *c.* 31. *s.* 36. 8 & 9 *W.* *c.* 20. *s.* 36. 11 *G.* *c.* 9. *s.* 6. 12 *G.* *c.* 32. *s.* 9.

And in general, any bank note, bill of exchange, dividend warrant, or any bond or obligation under the seal of the bank, or indorsement thereon; or knowingly offering to dispose thereof. 15 *G.* 2. *c.* 13. *s.* 12.

(2) India bonds. 12 *G.* *c.* 32. *s.* 9.

(3) Bonds, receipts, warrants, or seal of the south-sea company. 9 *An.* *c.* 21. *s.* 57. 6 *G.* *c.* 4. *s.* 56. 6 *G.* *c.* 11. *s.* 50. 12 *G.* *c.* 32. *s.* 9.

(4) Exchequer bills: by the several acts which direct the issuing the same.

(5) Any power to transfer stocks. 8 *G.* *c.* 22. *s.* 1. 9 *G.* *c.* 12. *s.* 4.

(6) Lottery tickets and orders: by the several lottery acts.

(7) Policy of assurance. 6 *G.* *c.* 18. *s.* 13.

(8) Mediterranean passes. 4 *G.* 2. *c.* 18.

(9) Army debentures. 5 *G.* *c.* 14. *s.* 10. 9 *G.* *c.* 5. *s.* 19.

(10) Marriage licence or registry of a marriage. 26 *G.* 2. *c.* 33.

(11) Stamps on vellum, parchment, and paper, by the several stamp acts.

(12) Stamps on linen imported. 10 *An.* *c.* 19. *s.* 97. And selling it knowingly with a counterfeit stamp; 100 *l.* and the pillory. *id.*

And by the 9 & 10 *W.* *c.* 41. Forgers of seamens wills, or letters of attorney, shall over and above the penalties by former laws, forfeit 200 *l.* with costs; half to the king, and half to him that will sue. *s.* 3.

5. And besides these particular laws, in the 2 *G.* 2. a general law was made (for five years, and was afterwards revived and made perpetual), by which it is enacted, that *if any person shall falsely make, forge, or counterfeit, or cause or procure the same to be done, or willingly aid or assist in the false making, forging, or counterfeiting any deed, will, bond, writing obligatory, bill of exchange, promissory note, indorsement or assignment of any bill of exchange or promissory note, acquittance or receipt for money or goods, with intent to defraud any person; or shall utter or publish the same as true, knowing the same to be forged;—he shall be guilty of felony without benefit of clergy; but not to work corruption of blood, or disherison of heirs.* 2 G. 2. c. 25 s. 1, 5.

6. And by the 7 *G.* 2. *c.* 22. it is further enacted, by way of addition to the foregoing, that *if any person shall falsely make, alter, forge, or counterfeit, or willingly act or assist in the false making, altering, forging, or counterfeiting any acceptance of any bill of exchange, or the number or principal sum of any accountable receipt for any note, bill, or other security for payment of money, or any warrant or order for payment of money, or delivery of goods, with intent to defraud any person; or shall utter or publish the same as true, with intent to defraud any person, knowing the same to be false;—he shall be guilty of felony without benefit of clergy:* and this, without any saving of the corruption of blood, or disherison of heirs.

7. Forgery is excepted out of the act of general pardon, 20 *G.* 2.

Fornication. See Lewdness.

Fraud. See Cheat.

Fruit and Fruit trees. See Wood.

Fuel.

BY the 43 *El.* *c.* 14. All faggots to be sold shall contain in compass, besides the knot of the bond, 24 inches of assize; and every faggot stick within the bond, shall contain full three foot of assize, except only one stick to be one foot long, to stop or harden the binding.

By the 9 *An.* *c.* 15. All billets (except those made of beech, 10 *An.* *c.* 6.) that lie exposed in publick places where they are usually bought or sold, shall be assized, and cut or marked in manner following; That is to say,

All billets of what scantling or denomination soever, shall contain in length three foot and four inches, and be of the following dimensions; *viz.*

Names of the billets.	Round		Half round		Quarter cleft		
	in.	qr.	in.	qr.	in.	qr.	
A ſingle	7	2	0	0	0	0	No notch.
A caſt	10	2	12	1	12	0	One notch.
A trois	13	0	15	0	14	3	Three in the middle.
2 caſt	15	0	17	1	17	0	Two notches.
3 caſt	18	1	21	1	21	0	One at each end, and one in the middle.
4 caſt	21	1	24	2	24	0	4 notches.
5 caſt	23	3	27	2	27	0	5 notches.
6 caſt	26	0	30	0	29	2	6 notches.
7 caſt	28	0	32	2	32	0	7 notches.
8 caſt	30	0	34	3	34	0	8 notches.
9 caſt	31	3	36	3	36	1	9 notches.
10 caſt	33	2	38	3	38	0	10 notches.
11 caſt	35	1	——		——		11 notches.
12 caſt	36	3	——		——		12 notches.
13 caſt	38	1	——		——		13 notches.
14 caſt	39	3	——		——		14 notches.
15 caſt	41	0	——		——		15 notches.
16 caſt	42	2	——		——		16 notches.
17 caſt	43	3	——		——		17 notches.
18 caſt	45	0	——		——		18 notches.
19 caſt	46	1	——		——		19 notches.
20 caſt	47	2	——		——		20 notches.

And if they ſhall not be thus aſſized and marked, then on information to a juſtice of the peace, mayor, or other head officer, he ſhall call before him ſix good and lawful men of the town, and ſhall ſwear them truly to inquire and preſent, whether the ſame be of good and ſufficient aſſize; and if they ſhall preſent that any of them is not ſufficient, the ſame ſo being deficient ſhall be forfeited, and be delivered to the overſeers, to be by them diſtributed to the poor. *id. ſ.* 2.

And by the 43 *El. c.* 14. The billets ſhall be meaſured within ſix inches of the midſt; and the ſurpluſage which ſhall happen between any two next meaſures, being above the one, and under the other, ſhall be taken for the benefit of the buyer.

Fuller's earth. See **Woollen manufacture.**

Furze. Burning it in foreſts. See **Burning.**

Game.

THE ſtatutes relating to this title are very numerous, and the ſenſe ſometimes a little perplexed, ſo that perhaps upon a view of the whole, it may ſeem, that about four or five new acts, comprehending the ſeveral heads here under mentioned, and repealing all the preceding ones, would conduce to render this branch of our laws more intelligible and uſeful.

After having firſt premiſed (in order to avoid frequent repetitions throughout this whole title) that it is enacted by the ſtatute of the 8 *G. c.* 19. that where any perſon for any offence againſt any law in being at the making of the ſaid act, for the better preſervation of the game, ſhall be liable to pay any pecuniary penalty or ſum of money, on conviction before a juſtice of the peace, the proſecutor may either proceed to recover the ſame in ſuch manner, or he may ſue for the ſame (before the end of the ſecond term after the offence committed, 26 *G.* 2. *c.* 2.) by action of debt, or on the caſe, bill, plaint, or information, in any court of record at *Weſtminſter*, wherein if he recovers he ſhall have double coſts; (This being premiſed) I will treat of this ſubject under the following heads; containing,

I. Certain preliminary obſervations.

II. The laws concerning gamekeepers.

III. The qualification by eſtate or degree to kill game; with the puniſhment of perſons unqualified.

IV. Laws for preſerving the four footed game in particular.

V. Laws for preſerving the winged game in particular.

VI. Laws for preſerving the game of fiſh in particular.

Under which three laſt heads are comprehended thoſe reſtrictions which ſeem to concern all perſons whatſoever, whether qualified or not: for altho' a man be qualified to kill game, yet he muſt kill it in a lawful manner, and not in ſuch ways as tend utterly to deſtroy it.

I. Preliminary obſervations.

Foreſt, what.

1. A *foreſt* is a certain territory of woody grounds, and fruitful paſtures, privileged for wild beaſts and fowls of foreſt, chaſe, and warren, to reſt and abide there in the ſafe protection of the king, for his delight and pleaſure: which territory of ground ſo privileged,

vileged, is meered and bounded with unremoveable marks, meers, and boundaries, either known by matter of record, or by prescription; and also replenished with wild beasts of venary or chase, and with great coverts of vert for the succour of the said beasts there to abide: for the preservation and continuance of which, there are particular officers, laws, and privileges belonging to the same, requisite for that purpose, and proper only to a forest, and to no other place. *Manw.* 143.

Note; That *vert* comprehends every thing which bears green leaves in the forest. *Manw.* 146.

2. Beasts of forest are properly hart, hind, buck, hare, boar and wolf; but legally, all wild beasts of venary. 1 *Inst.* 233. Beasts of forest.

3. *Purlieu* comes from the *French*, *pur*, clear, entire, and exempt; and *lieu*, a place; that is, a place entire, clear, or exempt from the forest: and signifies those grounds which *Henry* the second, *Richard* the first, or king *John* added to their ancient forests, over other mens grounds; and were disafforested by the statute of *charta de foresta*. 4 *Inst.* 303. *Manw.* 242. Purlieu, what.

But nevertheless the *purlieu* as to some purposes is forest still, and is only disafforested as to the particular owners of the land and for their benefit, and not generally to give liberty to any man to hunt the wild beasts, and spoil the vert. And if those beasts do escape out of the forest into the *purlieu*, the king hath a property in them still against any man, but against the owners of the woods and lands in which they are; and such owners have a special property in them *ratione loci*, but yet so that they hunt them fairly, and not forestall them in their return towards the forest. *Manw.* 292.

But a *purlieu* man may not hunt in every man's lands within the *purlieu*, but in his own lands only; and therefore if he find the beasts of the forest in his woods or lands in the *purlieu*, in such case he hath a property in them against any other man *ratione soli* (the king only excepted.) And if he begins the hunting in his own lands, then by reason of that property he may pursue his hunting thro' any man's woods or lands, so as he doth not enter into any forest, chase, park, or warren. And if he kill the beast in another man's land, and out of such privileged place, he may take and carry away the same by reason of the first property. But if the beasts recover the forest, he must call back his dogs, for they are then the king's wild beasts again. And if he do not call back and rebuke his dogs, and they kill the beast in the forest, he is a trespasser, tho' himself never came within the bounds thereof. But if in hunting towards the forest, the dogs fasten on it before it is within the bounds thereof, and the dogs still hanging on are drawn by the deer into the forest, and it is killed there, then by reason of the first property which he had *ratione soli*, and also by the pursuit and possession thereof before it entred the forest, he may lawfully enter and take it. *Manw.* 194,———7.

4. A *chase* (from *chasser*, to chase) is a privileged place for receipt of deer and beasts of the forest, and is of a middle nature betwixt a forest and a park. It is commonly less than a forest, and Chase, what.

not

not endowed with ſo many liberties, as officers, laws, courts; and yet is of a larger compaſs than a park, having more officers and game than a park. Every foreſt is a chaſe, but every chaſe is not a foreſt. It differeth from a park in that it is not incloſed; for if it is incloſed, it is a good cauſe of forfeiture; tho' it muſt have certain metes and bounds, but it may be in other mens grounds as well as in one's own. *Read. Game. Manw.* 49.

Beaſts of chaſe.

5. Beaſts of chaſe are the buck, doe, fox, martern, and roe; the two laſt of which are not now in *England.* Manw. 50.

Park, what.

6. A *park* (from the *French*, *parquer*, to incloſe) is a large parcel of ground privileged for wild beaſts of chaſe by the king's grant, or by preſcription. *Read. Game.*

Beaſts of park.

7. The beaſts of park properly extend to the buck, doe, fox; but in a common and legal ſenſe to all the beaſts of the foreſt. *Read. Game.*

Park to be incloſed.

8. A park muſt be incloſed; for if it lies open, it is a good cauſe of ſeizure into the king's hands, as a thing forfeited: and the owner cannot have an action againſt thoſe that hunt in his park, if it lies open. *Read. Game.*

Deer ſhall go to the heir.

9. Deer in a park ſhall go to the heir, and not to the executor. 1 *Inſt.* 8.

Warren, what.

10. A *warren* is a place privileged by preſcription or grant of the king, for the preſervation of the beaſts and fowl of the warren; *viz.* hares, conies, partridges, and pheaſants. *Read. Game.*

Need not to be incloſed.

11. A free warren may lie open, there being no neceſſity of incloſing it. *Read. Game.*

Conies ſhall go to the heir.

12. Conies in a warren (as hath been ſaid before of deer in the park) ſhall go to the heir, and not to the executor. 1 *Inſt.* 8.

Licence to erect.

13. It is not lawful for any man to erect a park, chaſe, or warren, without a licence under the great ſeal of the king; becauſe the common law gives no way to matters of pleaſure, for that they bring no profit to the commonwealth. 2 *Inſt.* 199.

But in the caſe of *K.* and *Sir W. Lowther, M.* 12 *G.* There was a motion for leave to file an information in nature of a *quo warranto*, againſt Sir *William Lowther*, to ſhew by what authority he had made and ſet up a warren. But it was denied by the court; becauſe it was of a private nature, and therefore proper to be proſecuted only in the name of the attorney general by information, if his majeſty thought fit. And the like motion had been denied before in the caſe of the lord *Liſburn.* L. *Raym.* 1409. *Str.* 637.

Which of theſe is the higheſt franchiſe.

14. A foreſt is the higheſt franchiſe of princely pleaſure; the next to that is a free chaſe; a chaſe in one degree is the ſame as a park, only a park is incloſed, and a chaſe is always open; the next in degree to a free chaſe, is a park; and next unto a park, is the franchiſe of a free warren. *Manw.* 148.

Common in a chaſe.

15. A perſon may have common in a chaſe, as well as in a foreſt; but a foreſt is governed by the foreſt law, and a chaſe and park by the common law. 4 *Inſt.* 314. *Manw.* 49.

Treſpaſs, in what caſe.

16. If I find a pheaſant in my lands, and I let my hawk fly, I may follow the flight into another man's land, by reaſon of the

first property which I had in the pheasant *ratione soli*; and if my hawk kill the pheasant in another man's land, I may enter and take it, by reason of that property and pursuit; and in that case, I shall not be punished as a trespasser for taking and carrying away the pheasant, but only for entring the ground. But if the pheasant fly into a warren (which is a privileged place for birds of warren) and the hawk kill it there, the falconer shall not have the pheasant, but the owner of the warren And the law is the same, in the cases of all wild beasts of the forest and chase. *Manw.* 193, 196.

17. Notwithstanding the common law allows of the hunting of foxes and badgers, being beasts of prey, in another man's ground, because the destroying of them is looked upon as a publick benefit; yet the digging and breaking the ground to unearth them is held to be unlawful, and the owner of the ground may maintain an action of trespass in that case. *Cro. Ja.* 321.

No trespass in following beasts of prey.

II. Concerning gamekeepers.

1. All lords of manors, or other royalties, not under the degree of an esquire, may by writing under their hands and seals (A) authorize one or more gamekeeper or gamekeepers within their respective manors or royalties. 22 & 23 *C.* 2. *c.* 25. *s.* 2.

Who may appoint a gamekeeper.

2. And may impower him thereby, upon their own manors, to kill hare, pheasant, partridge, or any other game:

With power to kill game.

But if the gamekeeper shall, under colour thereof, kill or take the same for the use of the lord, and afterwards sell and dispose thereof without the lord's consent; and be convicted, on complaint of such lord, and on oath of one witness, before one justice; he shall be committed to the house of correction for three months, to be kept to hard labour. 5 *An.* *c.* 14. *s.* 4.

3. But no lord of a manor shall make above one person to be a gamekeeper within any one manor, with power to kill game. And the name of such person shall be entred with the clerk of the peace where the manor lies; the entry to be made and viewed without fee; and a certificate thereof shall be granted by the clerk of the peace, on payment of one shilling:

One gamekeeper in one manor; and to be entred with the clerk of the peace.

And if any other gamekeeper, whose name is not so entred, *who shall not be otherwise qualified* by the laws of this kingdom to kill game, shall kill, sell, or expose to sale any hare, pheasant, partridge, moor, heath game, or grouse; he shall on conviction before one justice, on oath of one witness, forfeit for every offence 5 *l.* half to the informer, and half to the poor, by distress: for want of distress, to be sent to the house of correction for three months for the first offence, and for every other offence four months. 9 *An.* *c.* 25. *s.* 1.

Who shall not be otherwise qualified] From these words it seemeth clear, that a gamekeeper who is qualified in his own right to kill game, need not to be entred with the clerk of the peace.

4. And

To be alſo a menial ſervant.

4. And moreover, by the 3 *G. c.* 11. it is further enacted, that no lord of a manor ſhall make any perſon to be a gamekeeper with power to kill game, unleſs ſuch perſon be qualified by the laws of this realm ſo to do; or unleſs ſuch perſon be truly and properly a ſervant to the ſaid lord; or be immediately employed and appointed to take and kill the game for the ſole uſe of the ſaid lord, and not otherwiſe:

And if any perſon, not being qualified by the laws ſo to do, or not being truly and properly a ſervant of any lord of a manor, or not immediately employed and appointed to take and kill the game for the ſole uſe or immediate benefit of the ſaid lord, ſhall under colour or pretence of any power or authority, deputation, or qualification to him granted by any lord of a manor, take or kill any hare, pheaſant, partridge, or other game whatſoever; or ſhall keep or uſe any greyhounds, ſetting dogs, hays, lurchers, guns, tunnels, or any other engine, to kill and deſtroy the game; he ſhall forfeit 5 *l.* in like manner. *ſ.* 1.

Gamekeeper's power to ſearch.

5. The gamekeeper (ſo authorized) may ſearch for dogs and engines, and ſeize the ſame for the uſe of the lord, or deſtroy them. 22 & 23 *C.* 2. *c.* 25. *ſ.* 2.

But it hath been adjudged, that an authority from the lord of the manor is not of it ſelf ſufficient for this purpoſe, but that he ought to have a warrant from a juſtice of the peace. *Comb.* 183. *Carpenter* and *Adams*. At leaſt it may be ſafe to have ſuch warrant, eſpecially if any houſes are to be entred and ſearched.

For it would give too great a power to the gamekeepers, to leave it in their diſcretion to ſearch what places they ſhall think proper, as alſo to conſtitute them the judges whether ſuch or ſuch a perſon is or is not qualified to kill game. Therefore it is beſt to have a warrant from a juſtice of the peace, after information and oath of the offence firſt made.

III. Qualification by eſtate or degree to kill game; with the puniſhment of perſons unqualified.

The qualification by eſtate for killing game, in the reign of K. *Richard* the ſecond, was 40 *s.* a year; in the reign of K. *James* the firſt it was advanced to 10 *l.* a year, and after that in ſome inſtances to 40 *l.* a year; and at laſt in the reign of K. *Charles* the ſecond it was raiſed to 100 *l.* a year. Not that the laws have become gradually more ſevere; but as the value of money decreaſed, the qualification was raiſed in proportion, the eſtate continuing nearly the ſame; for an eſtate of 40 *s.* a year in the reign of K. *Richard* the ſecond was not much inferior to an eſtate of 100 *l.* a year in the reign of K. *Charles* the ſecond. And the penalty for deſtroying the game was even more ſevere then than it is now; as I ſhall ſhew. For as thoſe ancient laws relating to the game are ſtill in force, and are generally enacted ſo to be by the ſubſequent ſtatutes, it will be neceſſary in order to have a thorough knowledge of this matter to inſert them in their order; becauſe the penalties

nalties on each being different, the profecutor or juftices may chufe which of them they will convict an offender upon. Thus by the ftatute of the 5 *A.* hereafter following, if a perfon not having 100 *l.* a year fhall keep dogs or engines to deftroy the game, he fhall forfeit 5 *l.* but if fuch perfon have not 40 *s.* a year, he may upon the ftatute of *R.* 2. be punifhed by a year's imprifonment; and fo of the reft: provided that no perfon be profecuted upon more than one act for one offence.

1. The firft qualification relating to the game, was in the 13th year of the reign of *R.* 2. by which it is enacted, that no layman which hath not lands or tenements of 40 *s.* a year, nor clergyman if he be not advanced to 10 *l.* a year, fhall have or keep any greyhound, hound, nor other dog to hunt; nor fhall ufe fyrets, heys, nets, harepipes, nor cords, nor other engines for to take or deftroy deer, hares, nor conies, nor other gentlemens game: on pain of a year's imprifonment. And the juftices of the peace (that is, in their feffions) fhall enquire of the offenders in this behalf, and punifh them by the pain aforefaid. 13 *R.* 2. *ft.* 1. *c.* 13. 40 *s.* a year.

2. The next qualification by eftate or degree to kill game, was by a ftatute in the 1 *J.* whereby it is enacted, that every perfon who fhall keep any greyhound for courfing of deer or hare, or fetting dog or net to take pheafants or partridges (except he be feifed, in his own right or the right of his wife, of 10 *l.* a year eftate of inheritance, or 30 *l.* a year of a lives eftate, or goods to the value of 200 *l.* or be the fon of a knight or lord, or the fon and heir apparent of an efquire) and be thereof convicted, by confeffion, or oath of two witneffes, before two juftices. he fhall be committed to gaol three months, unlefs upon conviction he pay 20 *s.* to the churchwardens for the ufe of the poor, or after one month after his commitment he become bound by recognizance with two fureties before two juftices, in 20 *l.* a piece, not to offend again in like manner. 1 *J.* *c.* 27. *f.* 3. 10 l. a year.

3. The next qualification relates to deer and conies only, in the 3 *J.* *c.* 13. by which it is enacted, that if any perfon not having hereditaments of 40 *l.* a year, or not worth in goods 200 *l.* fhall ufe any gun or bow to kill any deer or conies; or fhall keep any buckftall, nets, or coney dogs (except he have grounds inclofed, and ufed for the keeping of deer or conies, the increafing of which faid conies fhall amount to the value of 40 *s.* a year; or keepers or warreners in their parks, warrens, or grounds); in fuch cafe, any perfon having lands or hereditaments of 100 *l.* a year in fee, or for life, in his own right or the right of his wife, may take from fuch perfon to his own ufe for ever fuch guns, bows, buckftalls, nets, and coney dogs. 3 *J.* *c.* 13. *f.* 5. 40 l. a year.

4. The next qualification relates to pheafants and partridges only, and is as follows: Every free warrener, lord of a manor, or freeholder feifed in his own or his wife's right, of 40 *l.* a year of inheritance, or lives eftate of 80 *l.* or worth in goods 400 *l.* may take pheafants and partridges (in the day time only) in his own free warren, manor, or freehold, betwixt *Michaelmas* and *Chriftmas* yearly. 7 *J.* *c.* 11. *f.* 7. 40 l. a year.

5. The

100l. a year.

5. The last general qualification by estate or degree to kill game, and which is now most to be regarded, is in the 22 & 23 C. 2. c. 25. by which it is enacted, that *every person, not having lands and tenements, or some other estate of inheritance, in his own or his wife's right, of the clear yearly value of* 100l. per annum, *or for term of life, or having lease or leases of* 99 *years, or for any longer term, of the clear yearly value of* 150l. *(other than the son and heir apparent of an esquire, or other person of higher degree, and the owners and keepers of forests, parks, chases, or warrens, being stocked with deer or conies for their necessary use, in respect of the said forests, parks, chases, or warrens) is hereby declared to be a person by the laws of this realm, not allowed to have or keep for himself or any other person, any guns, bows, greyhounds, setting dogs, ferrets, coney dogs, lurchers, hays, nets, lowbels, harepipes, gins, snares, or other engines for the taking and killing of game.* s. 3.

Searching for dogs and engines.

6. *And the gamekeeper, or any other person (authorized by warrant* (B) *of a justice of the peace) may in the day time search the houses, outhouses, or other places of any such person prohibited by this act to keep or use the same, as upon good ground shall be suspected to have or keep in his custody any guns, bows, greyhounds, setting dogs, ferrets, coney dogs, or other dogs to destroy hares or conies, hays, tramels, or other nets, lowbels, harepipes, snares, or other engines aforesaid, and the same to seize, and keep, for the use of the lord of the manor, or otherwise to cut in pieces or destroy.* 22 & 23 C. 2. c. 25. s. 2.

20s. penalty for keeping dogs and engines.

7. And if any unqualified person shall have, keep, or use any bows, greyhounds, setting dogs, ferrets, coney dogs, hays, lurchers, nets, tunnels, lowbels, harepipes, snares, or any other instruments for destruction of fish, fowl, or other game; and shall not give a good account before a justice, to the satisfaction of such justice how he came by the same, or else shall not in some convenient time (to be set by such justice) produce the party of whom he bought the same, or some other credible person to depose upon oath such sale thereof; he shall forfeit for every offence not under 5s. nor above 20s. half to the informer, and half to the poor, by distress; for want of distress, to be committed to the house of correction, not more than one month, nor less than ten days, there to be whipt and kept to hard labour. And if any person so produced or charged with the said offence, shall not before the justice give such evidence of his innocence as aforesaid, he shall be convicted thereof in the same manner as the person first charged therewith, and so from person to person till the first offender be discovered. 4 & 5 *W.* c. 23. *s.* 3.

And all lords of manors and their gamekeepers may within their manors oppose and resist such offender, in the night time, in the same manner as if the fact had been committed in any ancient chase, park, or warren inclosed. *s.* 4.

And no *certiorari* shall be allowed to remove any conviction, unless the party first become bound to the prosecutor in 50*l.* with such sufficient sureties as the justice shall think fit, to pay within a month after the conviction confirmed, or *procedendo* granted, full costs

costs and charges; and in default thereof, the justice shall proceed to the execution of the conviction. *s.* 7.

8. But by a subsequent statute 5 *An. c.* 14. *If any person, not qualified by the laws of this realm so to do, shall keep or use any greyhounds, setting dogs, hays, lurchers, tunnels, or any other engines to kill and destroy the game, and shall be thereof convicted* (C D) *on the oath of one credible witness, before one justice, he shall forfeit* 5 l. *half to the informer, and half to the poor, by distress* (E); *for want of distress, to be sent to the house of correction* (F) *for three months for the first offence, and for every other offence four months:*

5 l. penalty for keeping dogs and engines; and the same to be seized.

And any justice, and lord within his manor, may take away such dogs, nets, or other engines, which shall be in the power or custody of any person not qualified. s. 4.

Not qualified by the laws of this realm] On a conviction on this statute, exception was taken, that the defendant not being a person so and so qualified, and enumerating distinctly the several qualifications in 22 & 23 *C.* 2. omitted a new qualification allowed by this act, namely, that he was not a person authorized by a lord (or lady) of a manor to kill game for his use. And by the court; Had it been generally laid thus, that he not being a person qualified according to law, and so on, it had been enough; but the qualifications being distinctly and severally mentioned, the omission of one is fatal. 10 *Mod.* 26. *T.* 10 *An.* *Q.* and *Matthews.*

But in the case of *K.* and *Marriott*, *M.* 4 *G.* There was a conviction for keeping a greyhound; reciting that one *William Toune* came and informed, that the defendant being a person not qualified to keep a greyhound, did nevertheless keep one at such a place, and therewith killed several hares; and that he being summoned did appear, and being asked what he had to say, offered nothing in excuse, and therefore the justice convicted him. It was objected, that the justice should set out, why the defendant is not a qualified person, as that he is not the son of an esquire, nor has 100*l.* a year in his own or his wife's right: For he ought not to make himself the sole judge, but give the reasons at large. *Parker* Ch. J. seemed to think the conviction would be good, having followed the words of the statute, and that if the defendant was qualified, he ought to have shewn it before the justice, being summoned for that purpose. *Eyre* J. started an objection, that it was not the justice that had taken upon him to say the defendant was not qualified; but only the witness; for the conviction runs, that the witness being sworn saith, that the defendant *being a person no way qualified* did such a day keep a greyhound; so that it appears, the witness has given the law to the justice, and takes upon himself to judge of the defendant's qualifications, and the justice is only made use of as an instrument, to reduce the opinion of the witness into a conviction. By *Parker* Ch. J. the *being not qualified* should be the conclusion of the justice, and not the words of the witness; for he ought not to swear generally a man is not qualified, and such a general proof will not be good: This is only an invention, to support a conviction in

general terms, which would be bad if the particular facts were alledged. *Pratt* J. Where the juſtices have a ſummary juriſdiction, and no appeal lies (as in this caſe), we muſt keep them up ſtrictly to the law; and I ſhould be glad if we could make them ſet out the whole particularly. The caſe was adjourned. And afterwards *Pengelly* ſerjeant mentioned two caſes, *Q.* and *Hayward*, *E.* 12 *An.* There it was, *not being qualified, licenſed, or authorized to keep any engine*; and it was quaſhed. The other was the ſame term, and quaſhed, becauſe no qualifications were mentioned. And towards the end of the term this conviction was quaſhed; and the principal reaſon declared to be, becauſe the witneſſes had taken upon themſelves, to judge of the qualifications. *Str.* 66.

And in the caſe of *K.* and *Bryan*, *M.* 12 *G.* 2. which was a conviction on the gin act, exception was taken, that there was no averment, that it was not ſold to be uſed in medicine: and the caſes on the game act were mentioned, where in convictions it is neceſſary to exclude all the qualifications for killing game. On the other hand, it was inſiſted, that the reaſon of that was, becauſe thoſe were in the enacting clauſe, whereas this about medicine comes in by way of proviſo, and is by way of defence to be ſhewn on the defendant's part. And for that purpoſe was cited *K.* and *Theed*, *M.* 11 *G.* where in a conviction for obſtructing an exciſe officer on the 8 *An. c.* 9. it was objected, that it not being averred to be in the day, it ſhould have been ſhewn that there was a conſtable preſent, which is made neceſſary in the night; but it was held to be well, and that its being in the night ſhould have been ſhewn on the defendant's part. And by the court, This is brought within the general enacting clauſe: and the true diſtinction is, where the extenuation comes in by way of proviſo, or exception. And the conviction was confirmed. *Str.* 1101.

Nevertheleſs, after all, perhaps it may require ſome conſideration, whether it may not be moſt fitting, that the qualification, if there is any, ſhould come from the defendant himſelf, when he is aſked what he hath to ſay, why he ſhould not be convicted. For it ſeemeth ordinarily impoſſible for a witneſs to ſwear to ſo many negatives as are implied in the want of a qualification; as that the perſon had not then 100 *l.* a year of freehold, nor 150 *l.* a year held by leaſe for 99 years or upwards; that he was not, at the time of the offence committed, ſon and heir apparent of an eſquire or perſon of higher degree; nor the keeper of any foreſt, park, chaſe, or warren; nor gamekeeper to a lord or lady of a manor. Which particulars may cauſe it to be neceſſary, for the witneſs to have ſeen the rent roll of ſuch perſon's eſtate, and his title deeds, and to underſtand the nature and law of tenures, and what annuities, rent charges, or other incumbrances do affect ſuch eſtate; alſo it may require ſome knowledge of heraldry and pedigrees, ſo far forth as to know, who ſhall or ſhall not be deemed an *eſquire* (which perhaps may puzzle a wiſer man than a common informer), or perſon of higher degree, and whether or no the defendant is ſon and heir apparent to any ſuch perſon; alſo

it may be requiſite for the witneſs to know, what by any ordinary means he cannot come to the knowledge of, namely, that the defendant is not keeper of the foreſt, park, chaſe, or warren within which the game might be killed, and what are the boundaries of ſuch foreſt, chaſe, or warren; and he muſt have attended the keeper of the rolls of the quarter ſeſſions, to know whether the defendant is not inrolled gamekeeper of the manor within which ſuch game might be killed, and whether there is any other inrolled before him for killing game within the ſame manor, and muſt know alſo what are the boundaries of ſuch manor. Theſe and many other ſuch like particulars may happen to be included, in that general ſwearing that a perſon is not qualified to kill game. Therefore it ſhould ſeem to be ſufficient, that the witneſs ſwear to the fact only of killing game, or keeping inſtruments ſo to do, and conſequently to ſet forth that and no more in the conviction, but that further the defendant did alledge nothing in his defence, why he ſhould not be convicted; or if he pleaded any thing of qualification, then to ſet forth that alſo ſpecially, that the court may judge thereupon, whether or no he was qualified by the laws of this realm.

Shall keep or uſe] *H.* 8 *G. K.* and *Filer*. Conviction for *keeping* a lurcher to deſtroy game, not being qualified. Exception was taken, that it was not ſhewn he *uſed* the dog to deſtroy game; and it may be he only kept it for a gentleman who was qualified, it being common to put out dogs in that manner. But by the court, The ſtatute is in the diſjunctive, *keep* or *uſe*; ſo that the bare *keeping* a lurcher is an offence; and ſo it was determined in the caſe of *K.* and *King*, *E.* 3 *G.* which was a conviction for keeping a gun; and it was not doubted by the court, whether the *keeping* was not enough to be ſhewn, but the only queſtion they made was, whether a gun was ſuch an engine as is within that ſtatute: and in that caſe a difference was taken, as to the keeping a *dog*, which could only be to deſtroy the game; and the keeping a *gun*, which a man might do for the defence of his houſe. And the conviction was confirmed. *Str.* 496.

Uſe] In the caſe of *K.* and *King* aforeſaid, *Parker* Ch. J. ſaid, that walking about with intent to kill game, is evidence of *uſing* the inſtrument for that purpoſe. *Seſſ. C. V.* 1. 88.

Any greyhounds, ſetting dogs, hays, lurchers, tunnels, or any other engines] *H.* 13 *G.* 2. *Hooker* and *Wilks*. An action of debt was brought on the 8 *G. c.* 19. for the penalty of 30 *l.* by uſing a *hound* to deſtroy game. And after a verdict for the plaintiff, the judgment was arreſted; for the ſtatute of the 5 *An. c.* 14. has not the word *hound*, and the words *other engines* come after *nets*, and are applicable only to inanimate things. And this being a penal law, cannot be extended. The ſtatute of the 22 & 23 *C.* 2. *c.* 25. has indeed general words, *or any other dogs to deſtroy game*; but this is not a conviction on that ſtatute. *Str.* 1126.

Nor indeed could it have been a conviction on that ſtatute, for any penalty in certain for killing and deſtroying the game; for

the ſtatute of the 22 & 23 *C.* 2. doth not inflict a general penalty, upon perſons unqualified who ſhall kill and deſtroy the game; but only declares, who ſhall or ſhall not be deemed unqualified; and gives power to lords of manors and their gamekeepers to ſeize the dogs, nets, and other engines of ſuch unqualified perſons. But if the defendant did kill the game, and had the ſame in his cuſtody; he might have been proſecuted for the penalty of 20*s.* for ſuch offence, by the ſtatute of the 4 & 5 *W.* hereafter following.—But then the conſequence of all this will be, that it is not penal barely to *keep* a *hound* on this ſtatute of the 5 *An.* but if any unqualified perſon ſhall do ſo, the gamekeepers or others, authorized by a juſtice's warrant, may ſeize and keep or deſtroy the ſame, by the aforeſaid ſtatute of the 22 & 23 *C.* 2.

Any other engines] *T.* 11 *G.* 2. *K.* and *Gardiner.* It was moved to quaſh a conviction, for unlawfully having and keeping a *gun*, being an engine or inſtrument for deſtroying the game. And it was urged, that this is no ſufficient charge within this act, or any other of the laws relating to the game: For it is not ſaid, that the defendant *uſed* the gun for the deſtruction of game; and a gun is not an inſtrument ſo far appropriated to killing game, as that it is criminal for a perſon to have one in his cuſtody only: And it would have been altogether as well, if it had been ſaid, that the defendant had in his cuſtody a *cane* for the deſtruction of the game, which may poſſibly be uſed for that purpoſe. The only offences intended to be prevented by the act are, the keeping of engines appropriated to, and which can only be uſed in, the deſtroying of game. A gun is an engine, not for killing the game, but for the defence of a man's houſe. And the whole court were clearly of opinion, that this conviction is not good. For (as they argued) if the ſtatute is to be conſtrued ſo largely, as to extend to the bare having of any inſtrument, that may poſſibly be uſed in deſtroying game, it will be attended with very great inconvenience; there being ſcarce any, though ever ſo uſeful, but what may be applied to that purpoſe. And though a gun may be uſed in deſtroying game, and when it is ſo, doth then fall within the words of the act; yet as it is an inſtrument proper, and frequently neceſſary to be kept and uſed for other purpoſes, as the killing of noxious vermin, and the like, it is not the having a gun, without applying it in the deſtruction of game, that is prohibited by the act: but otherwiſe it is of lurchers, harepipes, and ſuch like, which are peculiarly fitted or diſpoſed for killing game. The bare *keeping* of theſe for the purpoſe of killing game, is ſufficient to convict an offender, and it will be incumbent upon the defendant himſelf to prove, that he kept them for other purpoſes. And the conviction therefore was quaſhed. After which, *Strange* ſolicitor general ſaid, that in the caſe of *K.* and *King*, *E.* 3 *G.* Lord *Macclesfield* ſaid, that he was in the houſe of commons when this act was made, and he himſelf objected to the inſerting of the word *gun* therein, becauſe it might

be attended with great inconvenience. *Andr.* 255. *Seſſ. C. V.* 2. 204. *Str.* 1098.

And indeed it was not at all neceſſary to inſert a gun in this act; ſince the carrying of a gun is prohibited under double the penalty, by the ſtatute of *H.* 8. hereafter following.

And ſhall be thereof convicted] *H.* 6 *G. K.* and *Johnſon.* Conviction for keeping a gun, not being qualified. Exception was taken, that here was not a reaſonable *ſummons*; for it was made on the fifth of *October*, to appear the ſame day, which might be impoſſible upon account of diſtance, or the ſummons being ſerved late, and his witneſſes might not be got together on ſo ſhort a warning: then it is to appear *at the pariſh aforeſaid*, whereas there are two pariſhes mentioned before; ſo the man may have gone to one, whilſt they were convicting him at the other. It was anſwered, that the defendant appeared at the time and made defence, ſo that cures all defects in the ſummons. And by the court, The anſwer is right. *Str.* 261.

On the oath of one credible witneſs] *H.* 9 *G. K.* and *Gage.* The defendant was convicted for uſing a greyhound in killing hares. Exception was taken to the conviction, that the ſtatute hath only given the juſtices juriſdiction to convict upon the oath of one or more credible witneſſes, whereas this was upon his own confeſſion, which it was inſiſted the juſtices had no power to take. But by the court, The conviction muſt be confirmed. The intent of mentioning the oath of one witneſs, was only to direct the juſtices, that they ſhould not convict on leſs evidence: ſuppoſe the confeſſion had not been before the juſtices, but before two witneſſes who had ſworn it; that would be convicting him on the oaths of witneſſes, and yet the evidence would not be ſo ſtrong as this. Here the juſtices had a better evidence, than the oath of any ſingle witneſs; and it is a monſtrous thing to ſay, that a better ſort of evidence ſhall not do. *Str.* 546.

Credible witneſs] *M.* 2 *G.* 2. *K.* and *Stone.* A conviction was quaſhed, becauſe the informer was the witneſs; divers convictions having been quaſhed for the ſame reaſon before. L. *Raym.* 1545. The ſame adjudged in the caſe of *K.* and *Blaney*, *T.* 11 *G.* 2. *Andr.* 240.

Before one juſtice] *H* 12 *G. K.* and *Buck.* It was moved, to quaſh an *indictment* for killing a hare, this not being a matter indictable, the ſtatute appointing a ſummary proceeding before juſtices of the peace; and a caſe was cited *K.* and *James*, *T.* 1 *G.* where an indictment for keeping an alehouſe was quaſhed, becauſe the ſtatute of the 3 *C. c.* 3. had directed a particular remedy. And by the court, The indictment muſt be quaſhed. *Str.* 679.

Shall forfeit 5 l.] *T.* 10 *An. Q.* and *Matthews.* On a conviction, exception was taken, that the perſon was charged with ſo many 5 *l.* as he had killed hares in the ſame day. And the court was of opinion, that the offence for which the ſtatute gave the forfeiture, was the keeping dogs and engines, and not killing

the hares. If a man not qualified goes a hunting, and kills never so many hares on the same day, he would forfeit but one 5 *l.* for it is but one offence; but if a man keeps dogs, and goes a hunting several days, and kills hares, if it was thus laid, that he such a day kept dogs and killed, and then again such a day, by laying thus severally, the offence is severed, and he shall forfeit 5 *l.* for each offence. 10 *Mod.* 26.

By distress] *T.* 9 *G.* *K.* and *Burchett.* The court ordered an attachment (unless cause shewn) against the town clerk of *Guildfold*, and a defendant convicted on the game act, for granting and suing out a replevin of goods distrained for the penalty. But on shewing cause the next term, when *Eyre* J. only was present, he discharged the rule, because it was only a contempt to the inferior jurisdiction of the justices, and in that case the king's bench never interposes. *Str.* 567.

For want of distress, to be sent to the house of correction] *T.* 12 *G.* *Hill* and *Bateman.* Before *Raymond* Ch. J. at *Westminster.* The defendant *Bateman*, being a justice of the peace, had convicted the plaintiff for destroying game, and though (as it was proved) the plaintiff had effects of his own, which might have been distrained, which were sufficient to answer the penalty he had incurred, yet the defendant sent him immediately to *Bridewell*, without endeavouring to levy the penalty upon his goods: and an action of trespass and false imprisonment being brought against *Bateman* for this commitment, the chief justice was of opinion, that the action well lay. And it was agreed, that where actions of this kind are brought against justices of the peace, they are obliged to shew the regularity of their convictions; and the informations, *&c.* laid before them, upon which their convictions are grounded, must be produced and proved in court. *Str.* 710.

And [*no*] certiorari *shall be allowed to remove the conviction or other proceedings on this act, unless the party convicted shall before the allowance thereof become bound* (G) *to the prosecutor in* 50*l.* *with such sureties as the justice shall think fit, to pay full costs and charges in* 14 *days after the conviction* [*confirmed*], *or* procedendo *granted. And in default thereof, the justice shall proceed in execution of the conviction in such manner as if no* certiorari *had been awarded.* 5 An. c. 14. s. 2.

Note; The word [*no*] is inserted instead of the words [*if any*] which are in the act, since that word seemeth necessary to make up the sense; and the word [*confirmed*] is added for the like reason. And indeed there have been too many inadvertencies in the drawing up of this act; for there is false grammar in no fewer than six places, besides other mistakes.

Search for game; with 20 s. penalty for having it.

9. *And the constable, authorized by a justice's warrant, shall enter into and search (in such manner and with such power as in case where goods are stolen, or suspected to be stolen) the houses, outhouses, or other places belonging to such houses of suspected persons not qualified: And if any hare, partridge, pheasant, pigeon, fish, fowl, or other game, shall (upon such search, or otherwise) be found, the offender shall be carried before a justice; and if such person do not give*

give a good account how he came by the ſame, ſuch as ſhall ſatisfy the ſaid juſtice, or elſe ſhall not in ſome convenient time, to be ſet by the juſtice, produce the party of whom he bought the ſame, or ſome other credible perſon to depoſe upon oath ſuch ſale thereof, he ſhall be convicted by the ſaid juſtice of ſuch offence, and upon ſuch conviction ſhall forfeit for every hare, partridge, pheaſant, fiſh, fowl, or other game, any ſum not under 5 s. *and not exceeding* 20 s. *half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be committed to the houſe of correction not more than one month, nor leſs than ten days, there to be whipt and kept to hard labour.* 4 & 5 W. c. 23. ſ. 3.

Or other game] Rabbets killed in a private warren, are not game within this act. L. *Raym.* 151.

For every hare, fiſh, fowl, or other game] Theſe words are very penal.

And if any perſon ſo produced, or charged with the ſaid offence, ſhall not before the juſtice give ſuch evidence of his innocence as aforeſaid, he ſhall be convicted thereof in the ſame manner as the perſon firſt charged therewith, and ſo from perſon to perſon till the firſt offender be diſcovered. id. ſ. 3.

And no certiorari *ſhall be allowed to remove any conviction, unleſs the party firſt become bound to the proſecutor in* 50 l. *with ſuch ſufficient ſureties as the juſtice ſhall think fit, to pay within a month after the conviction confirmed or* procedendo *granted, full coſts and charges; and in default thereof, the juſtice to proceed to the execution of the conviction.* id. ſ. 7.

10. *If any higler, chapman, carrier, innkeeper, victualler, or alehouſekeeper, ſhall have in his cuſtody or poſſeſſion, or ſhall buy, ſell, or offer to ſell any hare, pheaſant, partridge, moor, heath-game, or grouſe, unleſs ſuch game in the hands of ſuch carrier be ſent up by ſome perſon qualified;* (or, *if any perſon whatſoever, whether qualified or not, ſhall ſell, expoſe, or offer to ſale any hare, pheaſant, partridge, moor, heath-game, or grouſe,* 28 G. 2. c. 12.) *he ſhall be carried before a juſtice where the offence is committed* (H); *and being convicted thereof (in three months after the offence) on view, or oath of one witneſs, he ſhall forfeit for every hare, pheaſant, partridge, moor, heath-game, or grouſe, the ſum of* 5 l. *half to the informer, and half to the poor, by diſtreſs* (I); *for want of diſtreſs, to be committed* (K) *to the houſe of correction for the firſt offence three months, and for every other offence four months.* 5 An. c. 14. ſ. 2.

Carriers having game.

Convicted — on view, or oath of one witneſs] *Confeſſion*, tho' not mentioned in the ſtatute, being ſtronger evidence than the oath of one witneſs, was adjudged to be good. *H.* 9 *G. K.* and *Gage. Dalt.* 109, 162.

And no certiorari *ſhall be allowed to remove the conviction or other proceedings, unleſs the party convicted ſhall before the allowance thereof, become bound to the proſecutor in* 50 l. *with ſuch ſureties as the juſtice ſhall think fit, to pay full coſts in* 14 *days after the conviction confirmed, or* procedendo *granted. And in de-*

fault thereof, the juſtice ſhall proceed in execution of the conviction, in ſuch manner as if no certiorari *had been awarded.* 5 An. c. 14. ſ. 2.

And if any hare, pheaſant, partridge, moor, heath-game, or grouſe, ſhall be found in the ſhop, houſe, or poſſeſſion of any poulterer, ſaleſman, fiſhmonger, cook, or paſtry cook, or of any perſon not qualified in his own right to kill game, or intitled thereto under ſome perſon ſo qualified, it ſhall be deemed an expoſing thereof to ſale. 9 An. c. 25. ſ. 2. 28 G. 2. c. 12.

Found in the ſhop] This muſt be underſtood of proof that it was found. *Q.* and *George*, 6 *Mod.* 57.

And any juſtice of the peace, and lord within his manor, may take away any ſuch hare, pheaſant, partridge, moor, heath-game, or grouſe, or any other game, from any ſuch higler, chapman, innkeeper, victualler, or carrier, or any other perſon not qualified, which ſhall be found in his cuſtody or poſſeſſion. 5 An. c. 14. ſ. 4.

And any perſon that ſhall deſtroy, ſell, or buy any hare, pheaſant, moor, heath-game, or grouſe, and ſhall in three months make diſcovery of any higler, chapman, carrier, innkeeper, alehouſekeeper, or victualler, that hath bought or ſold, or offered to buy or ſell, or had in their poſſeſſion any hare, pheaſant, partridge, moor, heath-game, or grouſe, ſo as any one ſhall be convicted; ſuch diſcoverer ſhall be diſcharged of the pains and penalties hereby enacted for killing or ſelling ſuch game, and ſhall receive the ſame benefit as any other informer. 5 An. c. 14. ſ 3.

Inferior tradeſmen killing game.

11. And whereas great miſchiefs do enſue by inferior tradeſmen, apprentices and other diſſolute perſons, neglecting their trades and employments, who follow hunting, fiſhing, and other game, to the ruin of themſelves, and damage of their neighbours, therefore if any ſuch perſon ſhall preſume to hunt, hawk, fiſh, or fowl (unleſs in company with the maſter of ſuch apprentice duly qualified); he ſhall not only be ſubject to the other penalties, but if he be proſecuted for treſpaſs, in coming on any perſon's land, and be found guilty, the plaintiff ſhall not only recover damages againſt him, but full coſts. 4 & 5 *W. c.* 23. *ſ.* 10.

Soldiers.

12. By the yearly mutiny acts, if any officer or ſoldier ſhall, without leave of the lord of the manor under his hand and ſeal, deſtroy any hare, coney, pheaſant, partridge, pigeon, or other fowl, poultry, or fiſh, or his majeſty's game, and be convicted thereof, on oath of one witneſs, before one juſtice; every officer ſo offending ſhall forfeit 5 *l.* to the poor, and the commanding officer upon the place, for every offence committed by any ſoldier under his command, ſhall forfeit 20 *s.* in like manner. And if, upon conviction by the juſtices, and demand thereof made by the conſtable or overſeers of the poor, he ſhall not in two days pay the ſaid penalties, he ſhall forfeit his commiſſion.

The ſtatute of 33 H. 8. concerning guns.

13. Here next followeth the ſtatute of the 33 *H.* 8. *c.* 6. concerning guns: by which it is enacted as follows;

(1) No perſon, except he in his own right, or in the right of his wife, or ſome other to his uſe, have lands, tenements, fees, annuities, or offices, to the yearly value of 100 *l.* ſhall ſhoot in any

any croſs bow, hand gun, hagbut, or demihake, otherwiſe than as hereafter is expreſſed; on pain of 10 *l.* to be levied and diſpoſed of in any of the three ways hereafter mentioned.

(2) And no perſon, of what eſtate or degree ſoever, ſhall ſhoot in, carry, keep, uſe, or have in his houſe or elſewhere, any hand-gun, not being in the ſtock and gun of the length of one yard; or any hagbut or demihake, not being in the ſtock and gun of the length of three quarters of a yard; on the like pain of 10 *l.*

And every perſon having 100 *l.* a year as above, may ſeize every ſuch croſs bow; and every ſuch hand-gun, hagbut, and demihake being ſo deficient in length; and he may keep the croſs bow to his own uſe; but he ſhall in 20 days after ſeizure break and deſtroy the hand-guns, hagbuts, and demihakes, on pain of 40 *s.* in like manner, for every gun ſo ſeized, and not broken and deſtroyed; and the ſame ſo broken and deſtroyed he may keep to his own uſe.

(4) And no perſon, not being qualified as above, ſhall carry or have in his journey, going or riding in the king's highways or elſewhere, any croſs bow bent, or gun charged or furniſhed with powder, fire, or touch for the ſame, except in time and ſervice of war; on pain of 10 *l.* in like manner.

(5) And no perſon ſhall ſhoot with any hand-gun, demihake, or hagbut, at any thing at large, within any city, borough, or market town, nor within a quarter of a mile of the ſame, except it be at a butt or bank of earth in place convenient, or for defence of his perſon or houſe; on pain of 10 *l.* in like manner.

(6) And no perſon ſhall command his ſervant to ſhoot in any croſs bow, hand-gun, hagbut, or demihake, at any deer, fowl, or other thing, except only at a butt or bank of earth, or in time of war; on pain of 10 *l.* in like manner.

(7) But all gentlemen, yeomen, and ſervingmen of lords, knights, eſquires, and gentlemen; and all inhabitants of cities, boroughs, and market towns, may ſhoot with any hand-gun, demihake, or hagbut, of the length as above, but not under, at any butt or bank of earth, in place convenient.

And every ſuch lord, knight, eſquire, gentleman, and inhabitant of cities, boroughs, and market towns, may have and keep in their houſes any ſuch hand-gun, hagbut, or demihake, of the length aforeſaid, to the intent only to uſe or ſhoot in the ſame at a butt or bank of earth.

And every perſon inhabiting in a houſe two furlongs from any city, borough, or town, may keep and have in his houſe, for the only defence of the ſame, hand-guns, hagbuts, and demihakes, of the length abovementioned; and to uſe and exerciſe to ſhoot in the ſame at any butt or bank of earth near to his houſe, and not otherwiſe.

And except makers and ſellers of the ſame, having them for that purpoſe only, and being of the length above.

Alſo this act ſhall not extend to perſons inhabiting within five miles of the ſea; ſo that they ſhoot not at any deer, heron, ſhovelard, pheaſant, partridge, wild ſwine, or wild elk.

Alſo

Alſo this act ſhall not extend to ſervants carrying the ſame by their maſters command, ſo that they ſhoot not at any game.

Nor to any owner of a ſhip for having or keeping them, of what length ſoever, to be uſed in the ſhip only.

(Nor to perſons licenſed by the ſeſſions to ſhoot hawks meat, ſo as they ſhoot no game, and ſo that they ſhoot not within 600 paces of a hernery, nor within 100 paces of a pigeon houſe, nor in another man's park, foreſt, or chaſe. 1 *J. c.* 27. *ſ.* 7.

And except the ſheriff, who may carry a gun in the execution of his office. 5 *Co.* 72.)

(8) And if any perſon ſee or find any one offending or doing contrary to this act, he may arreſt, and bring or convey him to the next juſtice of the county where he is found offending; who ſhall upon *due examination and proof* thereof made before him, by his diſcretion have full power to commit (L) the offender to the next gaol, there to remain till ſuch time as the ſaid penalty or forfeiture ſhall be truly contented and paid by the ſaid offender; half to the king, and half to the firſt bringer or conveyer of the ſaid offender to the juſtice.

Which *due examination and proof* aforeſaid, is intended not to be by a jury, but by witneſſes. 1 *Ventr.* 33.

Mr. *Dalton* ſays, foraſmuch as in this caſe the juſtice hath the whole matter committed to himſelf, and the offenders remain convict upon his examination and proof of witneſs made before him; therefore he ought to be circumſpect in his examination, as alſo in his mittimus; and farther to make a record (M) of the matter, in writing under his hand, and alſo to ſend the eſtreat of it into the exchequer, whereby the king's duty may be levied. *Dalt. c.* 47.

In the conviction, it is not ſufficient to ſay generally that he had not 100*l.* a year, but the time muſt be certainly alledged, namely, that the defendant on the day and year aforeſaid (when the offence was committed) had not 100*l.* a year. 3 *Mod.* 280.

And upon ſuch conviction, it hath been adjudged, that a writ of error doth not lie. 1 *Ven.* 33.

(9) Alſo the juſtices in ſeſſions may inquire of, hear and determine the ſaid offences, ſo that no leſs fine than 10*l.* be aſſeſſed upon *preſentment* and conviction, to be levied in ſuch caſe to the king's uſe only.

And this may alſo be upon *indictment*. *Dalt. c.* 47.

And if the jury ſhall wilfully conceal any the ſaid offences, the court may charge another jury to enquire of ſuch concealment; and if it be ſo found, the firſt jury ſhall forfeit to the king every one 20*s.*

(10) Alſo the leet may inquire of, hear and determine the ſame; in which caſe, half the forfeiture ſhall upon preſentment and conviction be levied to the king's uſe; and one moiety of the other half to the owner of the leet, by diſtreſs or action of debt; and the other moiety to him that will ſue in any of the king's courts.

And if the jury ſhall wilfully conceal an offence, the ſteward may charge another jury to enquire of the concealment; and if it be

be found, the firſt jury ſhall forfeit 20 *s.* each; half to the owner of the leet, by diſtreſs or action of debt; and half to him that ſhall ſue in any of the king's courts.

(11) But no perſon ſhall be proſecuted but within a year, if it is by the king; and within half a year, if by any other perſon.

IV. Laws for preſerving the four footed game in particular.

Which ſaid laws, as hath been ſaid, do ſeem to concern all perſons whatſoever, whether qualified or not.

Now the four footed game, or the game of beaſts, are of three kinds, *viz.*

I. Deer.

II. Hares.

III. Conies.

I. Of deer.

There have been many laws from time to time enacted againſt deer ſtealers; which being not ſo much altered, as inforced by the ſubſequent ſtatutes, except only in increaſing the penalties, it may be proper to inſert them all in their order; and the rather, becauſe an offender, as it ſeemeth, may ſtill be convicted upon any one of them; and it is generally provided, that ſuch conviction upon one ſtatute, ſhall be as a bar to all the reſt.

1. The firſt ſtatute is in the 3 *Ed.* 1. *c.* 20. which enacts, that if *treſpaſſers in parks* be thereof attainted at the ſuit of the party, great and large amends ſhall be awarded according to the treſpaſs, and they ſhall have three years impriſonment, and after ſhall make fine at the king's pleaſure (if they have whereof,) and then ſhall find good ſurety that after they ſhall not commit the like treſpaſs: and if they have not whereof to make fine, after three years impriſonment, they ſhall find like ſurety; and if they cannot find like ſurety, they ſhall abjure the realm. And if none ſue within the year and day, the king ſhall have the ſuit.

Three years impriſonment and fine.

Treſpaſſers] This is, when a man either chaſeth in a park, or endeavours to kill ſome of the game thereof. 2 *Inſt.* 199.

In parks] This act, becauſe it is very penal, is to be underſtood, not of a nominal park erected without warrant, but of a lawful park only, whereunto three things are required, 1. A liberty, either by grant or preſcription. 2. Incloſure, by pale, wall or hedge. And 3. Beaſts ſavages of the park. 2 *Inſt.* 199.

2 The next ſtatute is that intitled *De malefactoribus in parcis*, 21 Ed. 1. ſt. 2. which enacts, that if any foreſter, or parker, ſhall find any treſpaſſers wandring within his liberty, intending to do damage therein, and that will not yield themſelves after hue and cry made to ſtand unto the peace, but do continue their malice, and diſobeying the king's peace do flee, or defend themſelves with force and arms; altho' ſuch foreſter, parker, or their aſſiſtants,

They may be lawfully reſiſted.

ſiſtants, do kill ſuch offenders, they ſhall not be troubled upon the ſame.

By night, or diſguiſed, and concealing the ſame; felony.

3. The next ſtatute makes hunting by night, or in diſguiſe, and concealing the ſame, felony; but within the benefit of clergy; as follows;

When *information* ſhall be made, of any unlawful hunting, in any *foreſt or park*, by night, or with painted faces, to any of the king's counſel, or to a juſtice of the peace, of any perſon to be ſuſpected thereof, he may make a warrant to take and arreſt the perſon, and to have him before the maker of the warrant, or any other of the ſaid counſel, or juſtices of the peace: who may by their diſcretion examine him of the ſaid hunting, and of the ſaid doers in that behalf: And if the ſame perſon *wilfully conceal* the ſaid huntings, or any perſon with him defective therein, that then the ſame concealment be, againſt every ſuch perſon ſo concealing, felony. But if he then confeſs the truth, and all that he ſhall be examined of, and knoweth in that behalf, then the ſaid offences of hunting by him done, ſhall be but treſpaſs finable at the next general ſeſſions. And if any reſcous or diſobeyſance be made to any perſon having authority to execute the warrant, by any perſon the which ſo ſhould be arreſted, ſo that the execution of the warrant thereby be not had, then the ſaid reſcous and diſobeyſance ſhall be felony. And if any perſon ſhall be convict of any ſuch huntings, with painted faces, vizors, or otherwiſe diſguiſed, to the intent they ſhould not be known, or of unlawful hunting in time of night, then the ſame perſon ſo convict, to have like punition as he ſhould have if he were convict of felony. 1 *H.* 7. *c.* 7.

When information ſhall be made] This information muſt ſhew at leaſt juſt cauſe of ſuſpicion; and it muſt be taken in writing, becauſe it is the ground of the warrant. 3 *Inſt. c.* 21.

In any foreſt or park] This doth not extend to a chaſe, nor to any foreſt or park in uſe or reputation, which are not ſo in law. 3 *Inſt. c.* 21.

Wilfully conceal] Lord *Coke*, who is a lover of the common law, and is jealous of every violation of it, ſeemeth to be out of humour with this act, and calls it an ill-penned law. He obſerves it is the firſt that was made for the making of any hunting felony, againſt that excellent and equal branch of *charta de foreſta*, *nullus de cætero vitam vel membra amittat pro venatione noſtra*; and that this, and other old ſtatutes concerning the foreſt, are called the good old laws and cuſtoms, and commanded to be obſerved; and therefore this new act is too ſevere for wild beaſts, whereof there can be no felony at the common law. And therefore the judges (he ſays) have made a favourable conſtruction of it, as is ſet forth in the following notable report:

M. 19 & 20 *El.* In the king's bench. *Gerrard* the *queen*'s attorney general (who was a grave and reverend man) ſaid openly, that it had been reſolved by the judges upon this ſtatute, that if a man in the night, or by day with painted face, do hunt as above, and being examined according to the act doth *conceal* it, yet this is upon

upon the conſtruction of the whole act no felony. For the firſt clauſe concerning the concealment, and the laſt clauſe concerning the fact it ſelf, muſt be coupled or joined by conſtruction together; that is to ſay, If any perſon be convict of ſuch hunting with painted face, or of unlawful hunting in the night, this conviction muſt be upon not guilty pleaded; which the judges expounded to be the concealment intended in the firſt branch; for they held that it ought to be a judicial concealment, and not an extrajudicial concealment before one of the counſel or a juſtice of the peace, which may lie in averment, ſo as before it be felony he muſt be convicted of ſuch hunting upon not guilty pleaded firſt, and after ſuch conviction, then he muſt be indicted again upon the whole matter, that he feloniouſly did conceal it, againſt the form of the ſtatute: And if the offender upon the firſt indictment confeſſeth the indictment, then it is ſuch a judicial confeſſion as this act intendeth, and no felony within this ſtatute.

This he ſays, he heard the attorney report, and did then obſerve it; which concurring with his own opinion, he thought good to publiſh, and the rather becauſe in *Lambard*'s juſtice, amongſt his precedents of indictments, there is an erroneous precedent (he ſays) of an indictment of felony for the concealment upon the examination before a juſtice of the peace. And upon the whole he thinks it the cleareſt way to make it treſpaſs, and not felony; which the party may do at his pleaſure. 3 *Inſt. c.* 21.

But Lord *Hale* ſays, that this ſeems a difficult expoſition; for upon his arraignment for the hunting, he only anſwers to that indictment, and is not examined touching others; and beſides, if he be indicted for the hunting, if there be evidence to convict him of the fact, he is convict of felony before the indictment for concealment come; and if there be not evidence to convict him of the principal, how ſhall there be evidence to convict him of the concealment? 1 *H. H.* 659.

But the ſtatute of 9 *G. c.* 22. hereafter following, commonly called the Black act, puts this matter out of queſtion, whilſt it continues in force, and renders this ſtatute of little uſe: but nevertheleſs it was proper to inſert it here, becauſe if that ſtatute ſhall be ſuffered to expire, the offence will fall back again upon this ſtatute.

4. The next ſtatute is in the 19th year of the ſame king, by which it is enacted, That no perſon, not having any park, chaſe or foreſt of his own, ſhall keep or cauſe to be kept any net, called deer-hays or buck ſtalls, on pain of 10*l.* a month; to him who ſhall ſue by action of debt: Or, the juſtices in ſeſſions may call before them any perſons ſuſpected, and examine them; and if they be found in default, may commit them till they have found ſurety for payment of the forfeiture to the king; and the juſtices ſhall have the tenth part of ſuch forfeiture for their labour. 19 *H.* 7. *c.* 11. Penalty of keeping nets for deer.

5. And by the ſame ſtatute, no perſon ſhall ſtalk, nor cauſe any other to ſtalk, with any buſh, or beaſts, to any deer, except in his own ground, chaſe, foreſt, or park, without licence of the owner, maſter, or keeper; on pain of 10*l.* in like manner. Penalty of ſtalking to deer.

6. The

10l. or treble damages.

6. The next act is in 5 *El. c.* 21. which is re-enacted with some additions by the 3 *J. c.* 13. which is altered and explained by the 7 *J. c.* 13. the substance of all which put together is as follows:

If any person shall by night or by day, wrongfully or unlawfully break or enter into any park impaled, or any other several grounds inclosed with wall, pale, or hedge, and used and kept for the keeping, breeding, and cherishing of deer, and wrongfully or unlawfully shall hunt, drive, or chase out, or take, kill, or slay any deer therein; and be thereof convicted at the assizes or sessions, upon indictment, bill of complaint, information, or otherwise, at the suit of the king or of the party, he shall for every offence pay 10*l.* to the party grieved, or treble damages and costs at the election of the party, to be assessed by the court; and shall find sufficient sureties for his good abearing for seven years, or continue in prison till he finds such sureties.

But on satisfaction of treble damages, the party may release the sureties within the seven years. Or if the person shall acknowledge his offence in open sessions, and that he is sorry therefore, and satisfy the party grieved, the court may discharge the recognizance.

But this shall not extend to any park or inclosed ground, hereafter to be made and used for deer, without the king's licence.

Guns, bows, and nets to kill deer, may be seized.

7. And by the said statute of the 3 *J. c.* 13. it is also enacted, that if any person not having lands or hereditaments of 40*l.* a year, or not worth in goods 200*l.* shall use any gun or bow to kill deer; or shall keep any buckstall or engine, unless he have grounds inclosed for keeping of deer; any person having 100*l.* a year may seize the same to his own use.

Selling deer.

8. Another statute is 1 *J. c.* 27. which enacts, that every person who shall sell, or buy to sell again, any deer, shall, on conviction at the assizes, or sessions, or before two justices out of sessions, forfeit for every deer 40*s.* half to him that will sue, and half to the poor.

20l.

9. The next act is in 13 *C.* 2. *c.* 10. by which it is enacted, that if any person shall unlawfully course, kill, hurt, or take away any red or fallow deer, in any forest, chase, purlieu, paddock, wood, park, or other ground where deer are or have been usually kept, without consent of the owner, or person chiefly intrusted with the custody thereof; or shall be aiding or assisting therein; and shall be convicted thereof by confession, or oath of one witness, before one justice, in six months after the offence committed; he shall forfeit for every offence 20*l.* half to the informer, and half to the owner of the deer, by distress; for want of sufficient distress, to be committed to the house of correction for six months to hard labour, or to the common gaol for one year; and not to be discharged thence, till he hath given sureties for his good behaviour for a year next after his enlargement.

Note; This act doth not appear to be limited to grounds inclosed only; altho' the statute of the 10 *G.* 2. *c.* 32. hereafter following seems to suppose it so.

10. The

10. The next act is the 3 *W. c.* 10. on which most of the convictions have been since that time; which (together with the alterations and additions made in and to the same by the 5 *G. c.* 15. 9 *G. c.* 22. and 10 *G.* 2. *c.* 32.) is as followeth: 30l.

If any person shall unlawfully course, hunt, take in toyls, kill, wound, or take away, any red or fallow deer, in any forest, chase, purlieu, paddock, wood, park, or other ground inclosed, where deer are, have, or shall be usually kept, without the consent of the owner or person chiefly intrusted with the custody thereof; or shall be aiding or assisting therein; and shall be convicted (N) *thereof, in* 12 *months after the offence, by confession, or oath of one witness, before one justice where the offence shall be committed, or the party apprehended: every such person so offending by unlawful coursing or hunting only, when no deer is taken, wounded, or killed, shall forfeit for every such offence* 20 l. *and in case any deer shall by such person be wounded, taken in toyls, or killed, he shall forfeit for every such deer* 30 l. *to be levied by distress* (O) *upon the goods and chattels of the offender by warrant of such justice; one third to the informer, one third to the poor, and one third to the owner of the deer: for want of sufficient distress, such person shall be imprisoned* (P) *for a year, and set in the pillory an hour on some market day in the next adjoining town to the place where the offence was committed, by the chief officer of such market town, or his under officer.* §. 2.

Unlawfully] Where a man kills deer in pursuance of a supposed right which he has, he is not within the intent of this, nor of the other acts against deer stealing. L. *Raym.* 584.

In any forest, chase, purlieu, paddock, wood, park or other ground inclosed, where deer are, have, or shall be usually kept] *M.* 13 *G.* 2. *K.* against *Calcutt* and *Monk*. There was a conviction for deer stealing in a *purlieu* of the forest. Whereunto exception was taken, that it was not averred, that *deer were usually kept* in the purlieu, whereas by the statute that seems to be required. To this it was answered, That such averment could not extend to a purlieu, for a purlieu is a place where by law deer cannot be kept, it being disafforested as well with regard to all others as the owner; and the oath of the ranger is, to drive deer out of the purlieu into the forest: Secondly, that the averment as to forests, chases, and purlieus, is not made necessary by the act, for the words *where deer are usually kept* extend only to ground inclosed; else the words *other ground* will make it necessary to aver, that the forest was inclosed, which is not the case in any part of *England*. And by the court, The answer is right in both respects. Another objection was, that it did not appear, but that the defendant was owner of the purlieu; in which case he had a right to chase the deer off his ground. But by the court, That would be matter of defence, and should be shewn on his part, according to the resolution (before-mentioned) in the case of *K.* and *Bryan*. So the convictions were confirmed. *Str.* 1119.

Or other ground inclosed, where deer are, have, or shall be usually kept] *T.* 1 *An. Q.* and *Moore*. A conviction for killing deer was quashed,

quashed, because it said only that he killed deer *in a certain place where deer had been usually kept*, and did not say *inclosed*. L. *Raym.* 791.

Aiding or assisting therein] On a conviction, the question was, whether he who lent dogs to another to hunt, was aiding and assisting therein, to wit, in the hunting: And by the opinion of three judges he was; but *Holt* Ch. J. was of a contrary opinion, for this being a penal law, shall be construed strictly; and if so, then he who lent the dogs could not be assisting in the act of hunting, and so not within the words of the statute, *aiding and assisting therein*, tho' he might be assisting thereunto. 2 *Salk.* 542, 543.

And shall be convicted thereof] There ought to be a summons in this, and in all other like cases, to warrant a conviction; and that ought to give a reasonable time to appear in: but if the defendant hath appeared, it cures the want of a summons. 1 *Salk.* 181, 383.

H. 3 *G. K.* and *Simpson*. The defendant was convicted for deer stealing; and the conviction set forth, that he had been summoned to appear before the justices; but it did not appear he ever was before them. Exception was taken to this, that as no appeal lies in this case, the justices should not have proceeded in the absence of the party, especially where it may end in a corporal punishment, as it may do here, for want of a distress. And at another day, on consideration, *Parker* Ch. J. delivered the resolution of the court: We are all of opinion, the offender may be convicted, without appearing. The statute is silent as to the method of proceeding, and the law of *England*, it is true, in point of natural justice, always requires the party charged with any offence to be heard before he be condemned in judgment; but that rule must have this exception, unless it is through his own default: were it otherwise, every criminal might avoid conviction. The law being so, the magistrate is bound to give some opportunity to the party to appear; and if upon such notice, he neither comes, nor sends a sufficient excuse, the magistrate may proceed to judgment. If this was not to be allowed, the consequence would be, that the offender would escape unpunished, because he would never appear purposely to be convicted; and that would be to make the execution of the law depend on the will of the offender.

There was another order of conviction, whereby it appeared, that the defendant made an attorney to defend for him: And by the court; We think that is certainly good; for the offender may intrust his defence with another, and the justices cannot enforce him to appear in person. And the orders were confirmed. *Str.* 44.

In 12 *months after the offence*] A conviction being returned on a *certiorari*, the objection was, that the conviction appeared to be a year after the day of the information; but it was held sufficient that the information be prosecuted within a year after the fact; for that is a good commencement of the suit, and it is from that the computation is made in all such cases. 1 *Salk.* 383.

Ent

But by the black act hereafter mentioned, and during the continuance thereof, this prosecution may be commenced at any time within three years after the offence. 9 *G. c.* 22. *s.* 13.

Oath of one witness] This must not be upon the single oath of the informer; and a conviction was quashed for that reason; divers convictions, as it is said, having been quashed for the same reason before. L. *Raym.* 1545. *Str.* 316.

Every such person so offending] Where several persons are convicted, they shall forfeit each 30 *l.* and not one sum of 30 *l.* for all. 1 *Salk.* 182.

To be levied by distress] *Sale* of the goods is not mentioned here in the statute; yet nevertheless where the law gives a distress for a publick benefit, the officer may sell. 1 *Salk.* 379.

By warrant of such justice] Altho' the *constable* is not appointed to execute this warrant, nor is so much as named in the clause; yet he is bound to obey the warrant, and is indictable if he does not: But he need not return the warrant it self, for that is not required, and it may be necessary to keep it for his own justification; but he must either return that, or certify what he has done upon it. 1 *Salk.* 381.

One third to the informer, &c.] The penalty need not be distributed by the conviction; *viz.* 10 *l.* to the informer, 10 *l.* to the poor, and 10 *l.* to the party grieved; for the judgment in such cases seldom mentions a distribution: it is enough to say, that he is convicted, and hath forfeited 30 *l.* according to the statute. 1 *Salk.* 383.

For want of sufficient distress] If the justice finds there is nothing to distrain, then he must make a record thereof, and make an adjudication for corporal punishment; but the offender is not to pay part, and suffer corporally for the residue. L. *Raym.* 546, 1195, 6.

H. 6 *G. K.* and *Whitlock.* The defendant was committed for want of distress; and the warrant set forth, that it had been certified to the justice by the constable, that there was not sufficient distress. It was objected, that there ought to have been a warrant to levy, and a return to that, that there was no distress; it may be, the constable only told him so. But by the court, The warrant is well enough; for the word *certified* imports it to be in a legal manner. *Str.* 263.

And then the act goes on thus:

Any owner of deer in any inclosed ground, or any person acting under him, may resist such offenders in the same manner as if the fact had been committed in an ancient chase or park. 3 *W. c.* 10. *s.* 5.

And as to the case of venison being found in a man's possession, it is further enacted, that the constable, by a justice's warrant, shall enter into and search (Q) in such manner and with such power as in case where goods are stolen or suspected to be stolen, the houses, outhouses, or other places belonging to such houses of suspected persons; and if any venison or skin of any deer, or

toyls, ſhall there be found, he ſhall apprehend the offender, and carry him before a juſtice; and if ſuch perſon do not give a good account how he came by the ſame, ſuch as ſhall ſatisfy the ſaid juſtice, or elſe ſhall not in ſome convenient time to be ſet by the ſaid juſtice, produce the party of whom he bought the ſame, or ſome other credible witneſs to depoſe upon oath ſuch ſale thereof, he ſhall be convicted by the ſaid juſtice of ſuch offence, and thereupon ſhall be ſubject to the forfeitures and penalties hereby inflicted for the killing of one deer. 3 *W. c.* 10. *ſ.* 3.

And by the 9 *G. c.* 22. commonly called the Black act, any juſtice may iſſue his warrant for this purpoſe; and if any veniſon or ſkin of any deer, ſhall be found in the cuſtody of any perſon, and it ſhall appear that ſuch perſon bought ſuch veniſon or ſkin of any one who might be juſtly ſuſpected to have unlawfully come by the ſame, and doth not produce the party of whom he bought it, or prove upon oath the name and place of abode of ſuch party, then the perſon who bought the ſame ſhall be convicted of ſuch offence by any juſtice of the peace, and ſhall be ſubject to the penalty above inflicted for killing one deer. 9 *G. c.* 22. *ſ.* 11, 17.

After conviction, the conſtable or proſecutor may detain in cuſtody the offender, if he ſhall not preſently pay the money due on conviction, during ſuch reaſonable time as a return may be conveniently made to the warrant of diſtreſs, ſo as ſuch detainer exceed not two days. 3 *W. c.* 10. *ſ.* 4.

And moreover, the perſon convicted, before he ſhall be diſcharged out of cuſtody, ſhall become bound to the perſon againſt whom the offence ſhall be committed, in 50 *l.* for his future good behaviour, and that he ſhall not offend in like manner; and upon refuſal ſhall be committed to gaol until the bond be given: And if he ſhall be afterwards convicted of any offence in the ſaid ſtatute of 3 *W. c.* 10. the bond ſhall be forfeited, and the penalty be recovered with coſts in any court at *Weſtminſter*, over and above the forfeitures, and to be diſtributed as the forfeitures. 5 *G. c.* 15. *ſ.* 4.

All this being done, the juſtice ſhall certify a true copy of the conviction under his hand and ſeal, to the next quarter ſeſſions, there to be kept amongſt the records. 10 *G.* 2. *c.* 32. *ſ.* 8.

And no *certiorari* ſhall be allowed to remove any conviction, or other proceeding thereupon, unleſs the party, before the allowance thereof, be bound to the proſecutor in 50 *l.* with ſuch ſureties as the juſtice ſhall think fit, to pay in a month after the conviction confirmed, or a *procedendo* granted, full coſts and damages; and at the ſame time become alſo bound to the juſtice with ſufficient ſureties, in the penalty of 60 *l.* with condition to proſecute the *certiorari* with effect, and to pay to the juſtice the forfeitures due by the conviction, or to render to the juſtice the perſon convicted within a month after the conviction ſhall be confirmed or a *procedendo* granted: and in default thereof, the juſtice may proceed to the execution of the conviction. 3 *W. c.* 10. *ſ.* 6. 5 *G. c.* 15. *ſ.* 1.

Or,

Or, after delivering to the juſtice the rule by which the conviction ſhall be confirmed, he may proceed, as if a *procedendo* had been granted. 5 *G. c.* 15. *ſ.* 2.

H. 6 *G. K.* and *Whitlock.* The defendant being brought up from *Newgate* by *habeas corpus*, it appeared upon the return, that he was committed for deer ſtealing, as the ſtatute of the 3 *W. c.* 10. directeth, not having ſufficient diſtreſs; and that this was done by one juſtice under the ſtatute of the 5 *G.* And exception was taken to the warrant, that it doth not appear, the conviction was ever confirmed in this court, or that the rule for confirmation was delivered to the juſtice, and therefore the juſtice could not proceed to execution: for the ſtatute gives to the juſtice a juriſdiction after confirmation, which he had not before; and therefore he ought to ſhew every thing requiſite to found his juriſdiction upon. But by the court, We take notice of our own records, and by them it appears that the conviction is confirmed: and the ſtatute doth not give the juſtice a new juriſdiction, but only revives his old one, which was ſuſpended by the *certiorari.* And the defendant was remanded. *Str.* 263.

Moreover, by the ſaid act of 5 *G. c.* 15. it is enacted, that if any keeper or other officer of any park, or place where deer are uſually kept, ſhall be convicted on the ſaid ſtatute of the 3 *W.* for killing or taking away any red or fallow deer, or being aiding therein, without conſent of the owner, or perſon chiefly intruſted with the cuſtody thereof; he ſhall forfeit 50*l.* for each deer, to be diſtributed as the other forfeitures; to be levied by diſtreſs: for want of diſtreſs, to be impriſoned for three years, and be ſet in the pillory two hours on ſome market day in the next town to the place where the offence was committed, by the chief officer of ſuch market town, or his under officer. *ſ.* 5.

And it is further enacted, that if any perſon ſhall at any time pull down or deſtroy, or cauſe to be pulled down or deſtroyed, the pale or walls of any park, foreſt, chaſe, purlieu, paddock, wood, or other ground incloſed, where any red or fallow deer ſhall be then kept, without the conſent of the owner, or perſon chiefly intruſted with the cuſtody thereof; and ſhall be convicted thereof before one juſtice, by confeſſion, or oath of one witneſs, he ſhall ſuffer the ſaid forfeitures of the 3 *W.* for killing one deer. 5 *G. c.* 15. *ſ.* 6.

And any perſon ſued for any thing done either on the 3 *W. c.* 10. or on this act, may plead the general iſſue; and if he recovers, ſhall have treble coſts. 5 *G. c.* 15. *ſ.* 3.

Transportation for offences in places incloſed.

11. Next follows the ſtatute of the 5 *G. c.* 28. by which it is enacted, that if any perſon ſhall enter into any park, paddock, or other incloſed ground where deer are uſually kept, and wilfully wound or kill any red or fallow deer there, without conſent of the owner of the ground, or of the perſon intruſted with the cuſtody thereof, or ſhall be aiding or aſſiſting therein; and ſhall be convicted thereof before the judge of aſſize, upon indictment, by verdict or confeſſion,—he ſhall be tranſported for ſeven years:

But not to be proſecuted likewiſe on any of the former acts, all which nevertheleſs ſhall be of force.

Felony without benefit of clergy.

12. Thus ſtood the laws, till the great inſolencies of the *Waltham Blacks* made a further proviſion neceſſary, by that famous act of the 9 *G. c.* 22. from them uſually called the *Black act*, which hath created more new felonies than any other ſtatute whatſoever: which ſaid act being temporary only, hath been continued from time to time, and by the laſt continuance 24 *G.* 2. *c.* 57. is to be in force to *Sep.* 1. 1757, *&c.* which, with regard to the ſubject before us, doth enact as follows:

If any perſon or perſons, being armed with ſwords, fire arms, or other offenſive weapons, and having his or their faces blacked, or being otherwiſe diſguiſed, ſhall appear in any foreſt, chaſe, park, paddock, or grounds incloſed with any wall, pale, or other fence, wherein any deer have been or ſhall be uſually kept, or ſhall unlawfully and wilfully hunt, wound, kill, deſtroy, or ſteal any red or fallow deer; or if any perſon or perſons (whether armed and diſguiſed or not) ſhall unlawfully and wilfully hunt, wound, kill, deſtroy, or ſteal any red or fallow deer, fed or kept in any places in any of the king's foreſts or chaſes, which are or ſhall be incloſed with pales, rails, or other fences; or in any park, paddock, or grounds incloſed, where deer have been or ſhall be uſually kept; or ſhall forcibly reſcue any perſon being lawfully in cuſtody of any officer or other perſon, for any the ſaid offences; or ſhall by gift or promiſe of money, or other reward, procure any to join him or them in any ſuch unlawful act: every perſon ſo offending, being thereof lawfully convicted (in any county in *England*) ſhall be guilty of felony without benefit of clergy; but not to work corruption of blood, nor forfeiture of lands or goods.

Concerning the manner of bringing the offender to juſtice, and other particulars relating thereunto, it is proper to refer from hence to the title *Black act*; where theſe offences, together with the other offences in the ſaid act, are treated of more at large.

Tranſportation for a ſecond offence in places uninclofed.

13. It is to be obſerved, that this act of the 9 *G. c.* 22. extends only to killing and wounding deer in places *incloſed* (except the offender be withal armed and diſguiſed); and therefore the ſaid offence in places *uninclofed* remains as it was before the making the ſaid act: But by the ſtatute of 10 *G.* 2. *c.* 32. a ſecond offence againſt the former acts is made tranſportation: Which, after having recited, that whereas the aboveſaid act of the 9 *G. c.* 22. extends not to hunting or taking deer in open foreſts or chaſes, but only in ſuch as are incloſed, and offences in uninclofed places are only puniſhable by the 3 *W. c.* 10. which inflicts only a pecuniary puniſhment, which is not ſufficient to deter offenders,—— doth therefore enact, That if any perſon who ſhall be convicted of unlawfully courſing, hunting, taking in toils, killing, wounding, or taking any red or fallow deer, in any open or uninclofed foreſt or chaſe, where deer are uſually kept, ſhall (during the continuance of the ſaid act of 9 *G.*) be guilty of a ſecond offence of the like nature, and ſhall be thereof lawfully convicted on indictment or information; he ſhall be tranſported for ſeven years; and if he returns within the time, he ſhall be guilty of felony without benefit of clergy. And the clerk of the peace ſhall at the requeſt of

of the prosecutor, or of any person on his majesty's behalf, certify to the assizes a transcript under his hand and seal, briefly and in few words containing the effect and tenor of the first conviction (kept amongst the records); which certificate shall be sufficient proof of the first conviction. 10 *G.* 2. *c.* 32. *s.* 7, 8.

Beating the keeper, transportation.

14. Moreover, by the said act of the 10 *G.* 2. *c.* 32. If any person armed shall (during the continuance of the said act of 9 *G.*) come into any forest, chase, or park, wherein deer are usually kept (whether inclosed or not) with an intent to course, hunt, take in toyls, kill, wound, or tade away any red or sallow deer, and shall there unlawfully beat or wound any keeper or page of any such forest, chase or park, their servants or assistants in the execution of their office, and be thereof lawfully convicted; he shall be transported for seven years. 10 *G.* 2. *c.* 32. *s.* 9.

Destroying covert for deer.

15. Whereas the burning and destroying of goss, furze, and fern in forests and chases, doth destroy the cover necessary for the preservation of the deer and game there; therefore if any person not having a right or legal licence to do the same, shall set fire to, burn, or destroy (or be aiding therein) any goss, furze, or fern in any forest or chase, without consent of the owner or person chiefly intrusted with the custody of such forest or chase, or of some part thereof, and being brought before a justice shall be thereof convicted by confession, or oath of one witness, or on view of the justice, he shall forfeit not exceeding 5 *l.* nor less than 40 *s.* half to the informer, and half to the poor; if not forthwith paid, to be levied by distress; and if no sufficient distress can be found, the justice shall commit him to the common gaol, for any time not exceeding three months, nor less than one month. 28 *G.* 2. *c.* 19. *s.* 3.

II. Of hares.

It is to be remembred, that I have already, under the third part of this title, treated of those particulars, which are common to this with other species of the game, as to destroying the same by unqualified persons; I here take notice of such things as belong to hares only, and which for the most part seem generally to concern all persons, whether qualified or not.

Tracing in the snow.

1. No person of what estate, degree, or condition he be, shall trace, destroy, and kill any hare in the snow, with any dog, bitch, bow, nor otherwise. And the sessions or leet may enquire hereof; and after inquisition found, they shall for every hare so killed, cess upon every offender 6 *s.* 8 *d.* to be forfeited to the king, if in the sessions; and to the lord of the leet, if in the leet. 14 & 15 *H.* 8. *c.* 10.

And by the 1 *J.* *c.* 27. Every person who shall trace or course any hares in the snow; shall, on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol for three months, unless he pay to the churchwardens for the use of the poor, 20 *s.* for every hare; or after one month after his commitment become bound by recognizance with two sureties in

20*l.* a piece, before two juſtices, not to offend again in like manner. *ſ.* 2.

Snares and harepipes.

2. And by the ſaid laſt mentioned act, every perſon who ſhall at any time take or deſtroy any hares, with harepipes, cords, or any ſuch inſtruments or other engines; ſhall forfeit for every hare 20*s.* in like manner. 1 *J. c.* 27. *ſ.* 2.

And by the 22 & 23 *C.* 2. *c.* 25. *ſ.* 6. If any perſon ſhall be found or apprehended ſetting or uſing any ſnares, harepipes, or other like engines, and ſhall be thereof convicted, by confeſſion, or oath of one witneſs, before one juſtice, in one month after the offence; he ſhall give to the party injured ſuch damages, and in ſuch time, as the juſtice ſhall appoint, and ſhall pay down preſently to the overſeers for the uſe of the poor, ſuch ſum not exceeding 10*s.* as the juſtice ſhall appoint; which if he ſhall not do, the juſtice ſhall commit him to the houſe of correction not exceeding one month.

Killing hares in the night.

3. If any perſon whatſoever ſhall take or kill any hare in the night time; he ſhall on conviction before one juſtice, on oath of one witneſs, forfeit 5*l.* half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be ſent to the houſe of correction for three months for the firſt offence, and for every other offence four months. 9 *An. c.* 25. *ſ.* 3.

Shooting hares.

4. Every perſon who ſhall ſhoot at, kill, or deſtroy any hare, with any gun or bow, ſhall, on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol three months, unleſs he pay to the churchwardens for the uſe of the poor 20*s.* for every hare; or after one month after his commitment become bound by recognizance with two ſureties before two juſtices, in 20*l.* a piece, not to offend again in like manner. The recognizance to be returned to the next ſeſſions. 1 *J. c.* 27. *ſ.* 2.

Buying and ſelling hares.

5. Every perſon, who ſhall ſell, or buy to ſell again, any hare, ſhall, on conviction at the aſſizes or ſeſſions, or before two juſtices out of ſeſſions, forfeit for every hare 10*s.* half to the poor, and half to him that will ſue. 1 *J. c.* 27. *ſ.* 4.

Hunting in corn.

6. If any manner of perſon ſhall hunt with ſpaniels in any ground where corn or other grain ſhall then grow (except in his own ground), at ſuch time as any eared corn or grain ſhall be growing thereon, and before it be ſhocked or cocked, and be thereof convicted at the aſſizes, ſeſſions, or leet; he ſhall forfeit 40*s.* to the owner of the corn; and if not paid in ten days, he ſhall be impriſoned for one month. And any juſtice may examine the offender, and bind him over to appear at the next ſeſſions, to anſwer the offence, and to pay the penalty, or receive the puniſhment. 23 *El. c.* 10. *ſ.* 5.

Taking hares in warrens.

7. By the Black act before mentioned, if any perſon, armed and diſguiſed, ſhall appear in any warren or place where hares are uſually kept; or if any perſon (whether armed and diſguiſed or not) ſhall rob any ſuch warren, or reſcue any perſon in cuſtody for either of the ſaid offences, or procure any to join with him in any ſuch unlawful act; he ſhall be guilty of felony without benefit of clergy.

III. Of

III. Of conies.

1. If any warrener ſhall find any treſpaſſers wandring within his liberty, intending to do damage therein, and that will not yield themſelves after hue and cry made to ſtand unto the peace, but do flee, or defend themſelves; altho' the warrener, or his aſſiſtant, do kill ſuch offenders, they ſhall not be troubled upon the ſame. 21 *Ed.* 1. *ſ.* 2.

Treſpaſſers in warrens may be reſiſted.

2. When information ſhall be made of unlawful hunting in a warren by night, or with painted faces, to any of the king's counſel, or to a juſtice of the peace, of any perſon ſuſpected, he may make a warrant to bring ſuch perſon before himſelf or any other of the ſaid counſel or juſtices; and if ſuch perſon ſhall conceal the ſaid hunting, or any of his accomplices, it ſhall be felony; but if he confeſſeth, it ſhall be but treſpaſs finable at the ſeſſions. 1 *H.* 7. *c.* 7.

Hunting in a warren by night or diſguiſed.

3. If any perſon ſhall in the night time enter into any grounds incloſed, and uſed for keeping of conies, and hunt, drive out, take, or kill any conies; he ſhall, on conviction at the ſuit of king or of the party, at the aſſizes or ſeſſions, on indictment, bill, information, or otherwiſe, forfeit 10*l.* to the party grieved, or treble damages and coſts at the election of the party; and find ſureties for his good abearing for ſeven years, or continue in priſon till he does. 3 *J.* *c.* 13. *ſ.* 2.

Hunting in a warren by night.

But this ſhall not extend to any grounds to be incloſed and uſed for conies after the making of this act, without the king's licence. *ſ.* 7.

4. No perſon ſhall kill or take in the night any conies upon the borders of warrens, or other grounds lawfully uſed for the breeding or keeping of conies (except the owner or poſſeſſor of the ground, or perſons employed by them); on pain that the offender, on conviction in one month after the offence, before one juſtice, by confeſſion, or oath of one witneſs, ſhall give to the party injured ſuch damages and in ſuch time as ſhall be appointed by the juſtice, and over and above pay down preſently to the overſeers for the uſe of the poor ſuch ſum not exceeding 10*s.* as the juſtice ſhall appoint; which if he ſhall not do, the juſtice ſhall commit him to the houſe of correction for ſuch time as he ſhall think fit, not exceeding one month. 22 & 23 *C.* 2. *c.* 25. *ſ.* 5.

Killing in the night, on the borders of warrens.

The ſtatute ſaith, *upon the borders of warrens*; but if they are out of the warren, no perſon hath any property in them, and a man may juſtify killing them if they eat up his corn; but no action lies againſt the owner of the warren. 5 *Co.* 104. *Read. Game.*

So a perſon that hath right of common may kill them, when they are out of the warren and deſtroy the common; but he cannot have an action on the caſe againſt the lord, for that would be to create a multiplicity of actions. *Cro. El.* 548. *Cro. Ja.* 195. *Cro. Car.* 388.

5. If any perſon ſhall at any time, enter wrongfully into any warren or ground lawfully uſed or kept for the breeding or keeping

Killing in places incloſed or uninclosed, by night or day.

ing of conies, whether it be inclofed or not; and there fhall chafe, take, or kill any conies; and fhall be thereof convicted in one month after the offence, before one juftice, by confeffion, or oath of one witnefs; he fhall yield to the party grieved treble damages and cofts, and be imprifoned three months, and after till he find fureties for his good abearing. 22 & 23 *C.* 2. *c.* 25. *f.* 4.

Setting fnares. 6. If any perfon fhall be found or apprehended fetting or ufing any fnares or other like engines, and fhall be thereof in like manner convicted, he fhall give to the party grieved fuch damages, and in fuch time as the juftice fhall appoint, and pay down prefently to the overfeer for the ufe of the poor fuch fum not exceeding 10*s.* as the juftice fhall appoint; which if he fhall not do, the juftice fhall commit him to the houfe of correction not exceeding one month. 22 & 23 *C.* 2. *c.* 25. *f.* 6.

Keeping engines. 7. If any perfon not having lands or hereditaments of 40*l.* a year, or not worth in goods 200*l.* fhall ufe any gun or bow to kill conies, or fhall keep any ferrets or coney dogs (except he have grounds inclofed for keeping of conies, the increafing of which fhall amount to 40*s.* a year to be let, and except warreners in their warrens); in fuch cafe, any perfon having 100*l.* a year may feize the fame to his own ufe. 3 *J.* *c.* 13. *f.* 5.

Felony. 8. By the Black act before mentioned, if any perfon, being armed and difguifed, fhall appear in any warren or place where conies are ufually kept; or (whether armed and difguifed or not) fhall rob any fuch warren, or refcue any perfon in cuftody for fuch offence, or procure any perfon to join him therein; he fhall be guilty of felony without benefit of clergy.

V. Laws concerning the winged game in particular.

I. Of hawks and hawking.
II. Of fwans.
III. Of partridges and pheafants.
IV. Of pigeons.
V. Of wild ducks, wild geefe, and other water fowl.
VI. Of grouife or moor game.
VII. Of herons.
VIII. Of other fowl.

I. Of hawks and hawking.

What hawks a man fhall bear. 1. No man fhall bear any hawk of the breed of *England*, called a nyeffe, gofhawk, taffel, laner, laneret, or faulcon; on pain of forfeiting his hawk to the king. And if he bring any of them over fea, or out of *Scotland*, he fhall bring a certificate thereof from the officer of the port, or warden of the march;

on the like pain of forfeiting the ſame to the king. And the perſon that bringeth any ſuch hawk to the king, ſhall have a reaſonable reward of the king, or elſe the hawk for his labour. 11 *H.* 7. *c.* 17.

Perſon finding a hawk.

2. Every perſon who findeth a faulcon, tercelet, laner, or laneret, or other hawk that is loſt, ſhall preſently bring the ſame to the ſheriff; and the ſheriff ſhall make proclamation in all the good towns in the county, that he hath ſuch an hawk in his cuſtody; and if he is challenged in four months, the owner ſhall have him again, paying the coſts: if he is not challenged in four months, the ſheriff ſhall have him, making gree to him that took him, if he be a ſimple man; but if he be a gentleman, and of eſtate to have the hawk, then the ſheriff ſhall redeliver to him the hawk, taking of him reaſonable coſts for the time that he had him in his cuſtody. 34 *Ed.* 3. *c.* 22.

Stealing a hawk.

3. And if any man ſteal any hawk, and the ſame carry away, not doing the ordinance aforeſaid; it ſhall be done of him as of a thief, that ſtealeth a horſe or other thing. 37 *Ed.* 3. *c.* 19. That is, he ſhall be guilty of felony, but ſhall have his clergy. 3 *Inſt.* 98.

Taking hawks or eggs out of the woods.

4. If any perſon ſhall take away any hawks or other eggs, by any means unlawfully, out of the woods or ground of any perſon; and be thereof convicted at the aſſizes or ſeſſions, on indictment, bill, or information, at the ſuit of the king or of the party; he ſhall be impriſoned three months, and ſhall pay treble damages; and after the three months expired, ſhall find ſureties for his good abearing for ſeven years, or remain in priſon till he doth. 5 *El.* *c.* 21. *ſ.* 3.

The ſame.

5. But by a more ancient ſtatute, no man ſhall take any ayre, faulcon, goſhawk, taſſel, laner, or laneret, in their warren, wood, or other place; nor purpoſely drive them out of their coverts accuſtomed to breed in, to cauſe them to go to other coverts to breed; nor ſlay them for any hurt done by them: on pain of 10 *l.* half to him that will ſue before the juſtices of the peace, and half to the king. 11 *H.* 7. *c.* 17.

And no manner of perſon, of what condition or degree he be, ſhall take or cauſe to be taken, on his own ground or any other man's, the eggs of any faulcon, goſhawk, or laner, out of the neſt; on pain (being convicted thereof before the juſtices of the peace) of impriſonment for a year and a day, and fine at the king's will; half to the king, and half to the owner of the ground where the eggs were taken. *id.*

Hawking in corn.

6. If any manner of perſon ſhall hawk in another man's corn after it is eared, and before it is ſhocked; and be convicted at the aſſizes, ſeſſions, or leet; he ſhall forfeit 40 *s.* to the owner: And if not paid in ten days, he ſhall be impriſoned for a month. 23 *El.* *c.* 10.

II. Of ſwans.

Qualification to keep ſwans.

1. No perſon (other than the king's ſon) unleſs he have lands of freehold to the value of five marks a year, ſhall have any mark or game of ſwans; on pain of forfeiting the ſwans, half to the king, and half to any perſon (ſo qualified) who ſhall ſeize the ſame. 22 *Ed.* 4. *c.* 6.

Stealing ſwans marked.

2. It is felony to take any ſwans that be lawfully marked, tho' they be at large. *Dalt. c.* 156.

Swans unmarked.

3. And as to ſwans unmarked; if they be domeſtical or tame, that is, kept in a moat, or in a pond near to a dwelling houſe, to ſteal ſuch is alſo felony. *Dalt. c.* 156.

So it ſeemeth of ſwans unmarked, ſo long as they keep within a man's manor, or within his private rivers; or if they happen to eſcape from thence, and be purſued and taken, and brought in again. *id.*

But if ſwans that are unmarked ſhall be abroad, and ſhall attain to their natural liberty, then the property of them is loſt; and ſo long, felony cannot be committed by taking them. *id.*

And yet ſuch unmarked and wild ſwans the king's officers may ſeize (being abroad) for the king's uſe, by his prerogative. Alſo, the king may grant them, and by conſequence another may preſcribe to have them, within a certain precinct or place. *id.*

Swans eggs.

4. Every perſon who ſhall take the eggs of any ſwans out of the neſt, or wilfully ſpoil them in the neſt; and ſhall be convicted thereof before two juſtices, by confeſſion, or oath of two witneſſes; ſhall be committed to gaol three months, unleſs he pay to the churchwardens for the uſe of the poor, 20*s.* for every egg; or after one month of his commitment, become bound by recognizance with two ſureties in 20*l.* a-piece, before two juſtices, never to offend again in like manner: which recognizance ſhall be returned to the next ſeſſions. 1 *J. c.* 27. *ſ.* 2.

But by a more antient ſtatute, no perſon ſhall take or cauſe to be taken, on his own ground or any other man's, the eggs of any ſwan; on pain (on conviction before the juſtices of the peace) of impriſonment for a year and a day, and fine at the king's will, half to the king, and half to the owner of the ſwans. 11 *H.* 7. *c.* 17.

III. Of partridges and pheaſants.

Partridges and pheaſants are birds of warren, and the law ſeems peculiarly to protect them; as appears by what follows:

Taking them in another man's ground.

1. By the 11 *H.* 7. *c.* 17. it is enacted, that no perſon, of what condition he be, ſhall take or cauſe to be taken, any pheaſants or partridges by nets, ſnares, or other engines, out of his own warren, upon the freehold of any other perſon, without the ſpecial licence of the owner or poſſeſſioner of the ſame; on pain of 10*l.* half to him that ſhall ſue, and half to the owner or poſſeſſioner of the ground where they ſhall be taken.

2. Every

2. Every person who shall shoot at, kill, or destroy, any pheasant or partridge, with any gun or bow; or shall take, kill, or destroy them with setting dogs and nets, or with any manner of nets, snares, engines, or instruments whatsoever; or shall take their eggs out of the nest, or spoil them in the nest; shall, on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol three months, unless he pay upon conviction to the churchwardens for the use of the poor, 20*s.* for every pheasant, partridge, or egg; or after one month after his commitment, become bound by recognizance with two sureties, before two justices, in 20*l.* each, not to offend again in like manner. The recognizance to be returned to the next sessions. 1 *J. c.* 27. *s.* 2. Taking them with dogs, nets, or engines; or their eggs.

And by the 7 *J. c.* 11. Every person, who shall take, kill, or destroy, any pheasant or partridge, with setting dogs and nets, or otherwise with any manner of nets, snares, or engines; shall, on conviction before two justices, by confession or oath of one witness, be committed to gaol for three months, unless he forthwith pay to the churchwardens or overseers 20*s.* for every pheasant or partridge; and further to become bound by recognizance of 20*l.* before one justice, that he shall not thereafter kill or destroy any pheasant or partridge. The recognizance to be filed at the next sessions.

3. Every person who shall sell, or buy to sell again, any partridge or pheasant (except they be reared and brought up in houses, or brought from beyond sea); shall, on conviction at the assizes or sessions, or before two justices out of sessions, forfeit for every partridge 10*s.* and for every pheasant 20*s.* half to him that will sue, and half to the poor. 1 *J. c.* 27. *s.* 4. Selling or buying.

4. If any person, of what estate, degree, or condition soever, shall take, kill, or destroy any pheasants or partridges in the night time; and be thereof convicted at the assizes, sessions, or leet; he shall forfeit for every pheasant 20*s.* and for every partridge 10*s.* half to him that shall sue, and half to the lord of the manor, unless such lord shall licence or procure the said taking or killing, in which case the said half shall go to the poor, to be recovered by any one of the churchwardens; and if not paid in 10 days after conviction, he shall be imprisoned for one month: And moreover, besides such forfeiture and imprisonment, he shall give bond to some justice of the peace, with good sureties, not to offend again in like manner for the space of two years. 23 *El. c.* 10. Taking in the night.

And by the 9 *An. c.* 25. If any person whatsoever shall take or kill any pheasant or partridge in the night time; he shall, on conviction before one justice, on oath of one witness, forfeit 5*l.* half to the informer, and half to the poor, by distress; for want of distress, to be sent to the house of correction for three months for the first offence, and for every other offence four months.

5. Every free warrener, lord of a manor, or freeholder seised in his own, or his wife's right, of 40*l.* a year estate of inheritance, or lives estate of 80*l.* or worth in goods 400*l.* may take pheasants and partridges (in the day time only) in his own free warren, Who may take in the day time.

warren, manor, or freehold, betwixt *Michaelmas* and *Christmas* yearly. 7 *J. c.* 11. *s.* 7.

At what time hawking at them shall be prohibited.

6. Every person whatsoever, who shall hawk at, destroy, or kill, any pheasant or partridge, with any kind of hawk, or dog, by colour of hawking, between the first of *July*, and the last of *August*; shall, on conviction before two justices, by confession, or oath of two witnesses, in six months after the offence, be committed to gaol for one month, unless he pay upon conviction to the churchwardens or overseers for the use of the poor, 40 *s.* for every such hawking at any pheasant or partridge, and 20 *s.* for every such pheasant or partridge which he, his hawk, or dog, shall take or kill. 7 *J. c.* 11. *s.* 2.

It is here observable upon the whole, that the killing of partridges and pheasants is prohibited in almost all manner of ways, except hawking only; and that hawking at them is only prohibited in two summer months, when the corn is growing, and the brood is very young: from whence it may be conjectured, that the extraordinary restrictions under this section have been intended in favour of the diversion of hawking, and to preserve these two species of game for that purpose. Which observation (if just) will help to explain some other restrictive clauses, in this part of the title, concerning the *winged game*.

IV. Of pigeons.

Who may erect a dove coat.

1. A lord of a manor may build a dove-coat upon his own land, parcel of the manor; but a tenant of a manor cannot do it without the lord's licence. 3 *Salk.* 248. But any freeholder may build a dove-coat on his own ground. *Cro. El.* 548. *Cro. Ja.* 382.

Dove coat not a nusance.

2. And it hath been adjudged, that erecting of a dove-house is not a common nusance, nor presentable in the leet. *Cro. Ja.* 490, 1.

Killing with dogs, nets, or engines.

3. Every person who shall shoot at, kill, or destroy any house-dove or pigeon with any gun or bow; or shall take, kill, or destroy the same with setting dogs and nets, or with any manner of nets, snares, engines, or instruments whatsoever; shall, on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol three months, unless he pay to the churchwardens for the use of the poor, 20 *s.* or after one month after his commitment, become bound by recognizance with two sureties, before two justices, in 20 *l.* apiece, not to offend again in like manner. The recognizance to be returned to the next sessions. 1 *J. c.* 27. *s.* 2.

Pigeons trespassing.

4. But if the pigeons come upon my land, and I kill them; the owner hath no remedy against me; tho' I may be liable to the statutes which make it penal to destroy them. *Cro. Ja.* 492.

Pigeons to go to the heir.

5. Doves in a dove-house, young and old, shall go to the heir, and not to the executor. 1 *Inst.* 8.

V. Of wild ducks, wild geese, and other water fowl.

1. Every person who shall shoot at, kill, or destroy with any gun or bow, any mallard, duck, teal, or widgeon; and the same be proved by confession or oath of two witnesses, before two justices; —shall be committed to gaol for three months, unless he pay to the churchwardens for the use of the poor, 20 *s.* or after one month after commitment become bound by recognizance with two sureties, before two justices, in 20 *l.* each, not to offend again in like manner: Which recognizance shall be returned to the next sessions. 1 *J. c.* 27. *s.* 2. Shooting water fowl.

2. No person, between the last day of *May*, and the last day of *August* yearly, shall take, or cause to be taken, any wild ducks, mallards, widgeons, teals, or wild geese, with nets or other engines; on pain of a year's imprisonment, and to forfeit for every fowl so taken 4 *d.* half to the king, and half to him that will sue by action of debt: Also the justices of the peace may inquire of, hear and determine the same, as in cases of trespass. 25 *H.* 8. *c.* 11. Not to be taken in the moulting season.

Nevertheless, any gentleman, or any other that may dispend 40 *s.* a year of freehold, may hunt and take such wild fowl with their spaniels only, without using a net or other engine except the long bow. *id.*

3. But by a subsequent statute, if any person whatsoever (between *June* 1. and *Oct.* 1. yearly, 10 *G.* 2. *c.* 32.) shall by hayes, tunnels, or other nets, drive and take any wild duck, teal, widgeon, or any other water fowl, in any place of resort for wild fowl in the moulting season; and shall be convicted thereof before one justice by the oath of one witness; he shall for every such fowl forfeit 5 *s.* half to the informer, and half to the poor, by distress; rendring the overplus above the penalty and charges of distress; for want of distress, to be committed to the house of correction, not exceeding one month, nor less than 14 days, to be whipt and kept to hard labour. And the nets to be seized and destroyed in the presence of the justice. 9 *An. c.* 25. *s.* 4. The same.

4. No person from *March* 31. to *June* 30. yearly, shall take or destroy the eggs of any mallard, teal, or other water fowl; on pain of a year's imprisonment, and of forfeiting for every egg one peny, half to the king, and half to him that will sue by action of debt; or, the justices of the peace may determine the same as in cases of trespass. 25 *H.* 8. *c.* 11. Destroying their eggs.

VI. Of grouse or moor game.

1. If any person whatsoever shall take or kill any moor, heath-game, or grouse, in the night time; he shall, on conviction before one justice, on oath of one witness, forfeit 5 *l.* half to the informer, and half to the poor, by distress; for want of distress, to be sent to the house of correction three months for the first offence, and for every other offence four months. 9 *An. c.* 25. *s.* 3. Killing grouse in the night.

2. Every

Shooting grouſe.

2. Every perſon who ſhall ſhoot at, kill, or deſtroy, with any gun or bow, any grouſe, heath cock, or moor game; ſhall, on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol for three months, unleſs upon conviction he pay to the churchwardens for the Uſe of the poor, 20 *s.* or, after one month after his commitment, become bound by recognizance with two ſureties in 20 *l.* each, before two juſtices, not to offend again in like manner: the recognizance to be returned to the next ſeſſions. 1 *J. c.* 27. *ſ.* 2.

Burning ling.

3. For the better preſerving the red and black game of grouſe commonly called heath-cocks, or heath-polts, no perſon whatſoever on any mountains, hills, heaths, moors, foreſts, chaſes, or other waſtes, ſhall preſume to burn between *Feb.* 2. and *June* 24. any grig, ling, heath, furz, goſe, or fern; on pain of being committed to the houſe of correction, for any time not exceeding one month, nor leſs than ten days, there to be whipt and kept to hard labour. 4 & 5 *W. c.* 23. *ſ.* 11.

As here is no method of conviction directed for this offence, the juſtices of the peace ſeem to have no cognizance thereof; but the trial and conviction muſt be at the aſſizes, or in the courts at *Weſtminſter*.

In the 5 *An. c.* 14. there are particular directions concerning the burning of ling, heath, or brakes in *Sherwood* foreſt, and other places in *Nottinghamſhire*, which not being of general concern are here omitted.

VII. Of herons.

Shooting herons.

1. Every perſon who ſhall ſhoot at, kill, or deſtroy, any hearn, with gun or bow, ſhall, on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol for three months, unleſs on conviction he pay to the churchwardens for the uſe of the poor, 20 *s.* or, after one month from his commitment, become bound by recognizance with two ſureties in 20 *l.* each, before two juſtices, not to offend again in like manner: The recognizance to be returned to the next ſeſſions. 1 *J. c.* 27. *ſ.* 2.

None ſhall take but by hawking.

2. No perſon, without his own ground, ſhall flea, take, or cauſe to be taken, by mean of craft or engine, any herons, unleſs it be with hawking; on pain of 6 *s.* 8 *d.* to him who ſhall ſue by action of debt; or the ſeſſions may call before them perſons ſuſpected, and examine them; and if found in default, may commit them till they have found ſurety for payment of the forfeiture to the king; and the juſtices ſhall have the tenth part of the forfeiture for their labour. 19 *H.* 7. *c.* 11.

Young herons.

3. And no perſon, without his own ground, ſhall take any young herons out of the neſt; on pain of 10 *s.* in like manner for every young heron. 19 *H.* 7. *c.* 11.

Eggs.

4. And if any perſon from *March* 31 to *June* 30 ſhall take or deſtroy the eggs of any heron; he ſhall be impriſoned for a year, and forfeit for every egg, 8 *d.* half to the king, and half to him that will ſue by action of debt, or before the juſtices of the peace. 25 *H.* 8. *c.* 11.

VIII. Of other fowl.

In general; No manner of perſon, from the laſt day of *March* to the laſt day of *June* yearly, ſhall by day or night, take, or deſtroy any eggs of any kind of wild fowl, from or in any neſt or place, where they ſhall chance to be laid by any kind of the ſame wild fowl; on pain of impriſonment for a year, and to forfeit for every egg of a buſtard 20 *d.* of a bittour or ſhovelard 8 *d.* and of other wild fowl (except crows, ravens, boſcards, and other fowl not uſed to be eaten) 1 *d.* half to the king, and half to him that will ſue by action of debt: Alſo the juſtices of the peace may determine the ſame, as in caſes of treſpaſs. 25 *H.* 8. *c.* 11.

VI. Laws for preſerving the game of fiſh in particular.

There are ſome acts relating to this ſubject, of which, being of leſs general concern, it is thought ſufficient to inſert only the titles; *viz.*

(1) An act for the preſervation of fiſhing in the river of *Severn.* 30 *C.* 2. *c.* 9.

(2) An act for the increaſe and better preſervation of ſalmon and other fiſh, in the rivers within the counties of *Southampton* and *Wilts.* 4 *An.* *c.* 21. In which ſome alterations are made by the 1 *G.* *ſt.* 2. *c.* 18.

(3) An act for the better preſervation and improvement of the fiſhery within the river of *Thames*, and for regulating and governing the company of fiſhermen of the ſaid river. 9 *An.* *c.* 26.

What follows, ſeems beſt reducible under theſe heads:

I. The penalty of fiſhing in ponds and other private fiſheries.

II. Rules about the ſize, and preſerving the breed of fiſh.

III. Rules concerning fiſhing in or near the ſea.

IV. Importing fiſh.

I. The penalty of fiſhing in ponds and other private fiſheries.

1. Any man may erect a fiſh pond without licence; becauſe it is a matter of profit, and for the increaſe of victuals. 2 *Inſt.* 199. Who may erect a fiſh pond.

2. If any treſpaſſers in ponds be thereof attainted at the ſuit of the party, great and large amends ſhall be awarded according to the treſpaſs; and they ſhall have three years impriſonment, and after ſhall make fine at the king's pleaſure (if they have whereof) and then ſhall find good ſurety, that after they ſhall not commit the like treſpaſs: And if they have not whereof to make fine, Three years impriſonment and fine.

after

after three years imprisonment, they shall find like surety; and if they cannot find like surety, they shall abjure the realm. And if none sue within the year and day, the king shall have the suit. 3 *Ed.* 1. *c.* 20.

Note; Those are trespassers in ponds, who endeavour to take fish therein. 2 *Inst.* 200.

Three months imprisonment and treble damages.

3. If any person shall unlawfully break, cut, or destroy any head or dam of a fish pond, or shall wrongfully fish therein, with intent to take or kill fish; he shall on conviction at the suit of the king, or of the party, at the assizes or sessions, be imprisoned three months, and pay treble damages; and after the three months expired shall find sureties for his good abearing for seven years, or remain in prison till he doth. 5 *El. c.* 21. *s.* 2, 6.

Treble damages and 10 s. to the poor.

4. If any person shall use any net, angle, hair, noose, troll, or spear; or shall lay any wears, pots, fish hooks, or other engines; or shall take any fish by any means or device whatsoever, or be aiding thereunto, in an river, stew, pond, mote, or other water, without the consent of the lord or owner of the water; and be thereof convicted by confession, or oath of one witness, before one justice, in one month after the offence; every such offender in taking or killing fish, shall pay any sum not exceeding treble damages, and 10 *s.* to the overseers for the use of the poor, by distress; for want of distress, to be committed to the house of correction not exceeding one month, unless he enter into bond with one surety to the party injured, not exceeding 10 *l.* never to offend in like manner. 22 & 23 *C.* 2. *c.* 25. *s.* 7.

And the justice may take, cut, and destroy all such angles, spears, hairs, nooses, trolls, wears, pots, fish hooks, nets or other engines, wherewith such offender shall be apprehended. *s.* 8.

Persons aggrieved may appeal to the next sessions, whose determination shall be final, if no title to any land, royalty, or fishery be therein concerned. *s.* 9.

Seizing of engines.

5. Whereas divers idle, disorderly, and mean persons, have and keep nets, angles, leaps, piches and other engines for the taking and killing of fish out of the ponds, waters, rivers, and other fisheries, to the damage of the owners thereof, therefore no person hereafter shall have or keep any net, angle, leap, piche, or other engine for the taking of fish; other than the makers and sellers thereof, and other than the owner and occupier of a river or fishery; and except fishermen and their apprentices lawfully authorized in navigable rivers. And the owner or occupier of the river or fishery, and every other person by him appointed, may seize, detain, and keep to his own use, every net, angle, leap, piche, and other engine, which he shall find used or laid, or in the possession of any person fishing in any river or fishery, without the consent of the owner or occupier thereof. And also any person, authorized by a justice's warrant, may in the day time search the houses, outhouses, and other places of any person hereby prohibited to have or keep the same, who shall be suspected to have or keep in his custody or possession any net, angle, leap, piche, or other engine aforesaid, and seize and keep the same to his own use, or cut or destroy the same, as things by this act prohibited

hibited to be kept by persons of their degree. 4 & 5 *W. c.* 23. *s.* 5.

6. By the Black act before mentioned, if any person (during the continuance of the said act) being armed and disguised, shall unlawfully steal or take away any fish out of any river or pond; or (whether armed and disguised or not) shall unlawfully and maliciously break down the head or mound of any fish pond, whereby the fish shall be lost or destroyed, or shall rescue any person in custody for such offence, or procure any other to join with him therein; he shall be guilty of felony without benefit of clergy. Felony.

II. Rules concerning the size, and preserving the breed of fish.

1. If any person shall lay or draw any net, engine, or other device, or cause any thing to be done in the *Severn*, *Dee*, *Wye*, *Teame*, *Were*, *Tees*, *Ribble*, *Mersey*, *Dun*, *Air*, *Ouze*, *Swaile*, *Calder*, *Wharf*, *Eure*, *Darwent*, or *Trent*, whereby the spawn or fry of salmon, or any kepper or shedder salmon, or any salmon not 18 inches from the eye to the extent of the middle of the tail, shall be taken and killed; or shall set any bank, dam, hedge, stank, or net cross the same, whereby the salmon may be taken, or hindred from passing up to spawn; or shall between *July* 31. and *Nov.* 12. (except in the *Ribble*, where they may be taken between *Jan.* 1. and *Sept.* 15) take any salmon of any kind in any of the said rivers; or shall, after *Nov.* 12. yearly, fish there for salmon with any net less than 2 ½ inches in the mesh; he shall, on conviction, in one month, before one justice, on view, confession, or oath of one witness, forfeit 5 *l.* and the fish, nets, and engines; half the said sum to the informer, and half to the poor, by distress; for want of distress, to be committed to the house of correction or gaol, not more than three months, nor less than one, to be kept to hard labour, and suffer such other corporal punishment as the justice can think fit: The nets and engines to be cut or destroyed, in presence of the justice: The banks, dams, hedges, and stanks, to be demolished at the charge of the offender, to be levied in like manner. 1 *G. st.* 2. *c.* 18. *s.* 14. Salmon.

Note; It is not said, who shall have the fish; so that it seemeth that they are forfeited to the king.

And no salmon out of the said rivers shall be sent to *London*, under six pounds weight; on pain that the sender, buyer, or seller, on the like conviction, shall forfeit 5 *l.* and the fish, half to the informer, and half to the poor, by distress; for want of sufficient distress, to be committed to the house of correction or gaol, to be kept to hard labour for three months, if not paid in the mean time. *id. s.* 15.

And persons aggrieved may appeal to the next sessions. *id. s.* 17.

2. No salmon shall be taken in the *Humber*, *Ouze*, *Trent*, *Done*, *Arre*, *Derwent*, *Wharfe*, *Nid*, *Yore*, *Swale*, *Tese*, *Tine*, *Eden*, or any other water wherein salmon are taken, between *Sep.* 8. and *Nov.* 11. Nor shall any young salmon be taken at *Milpools* (nor in Salmon spawn, and smelts.

other places, 13 *R.* 2. *ſt.* 1. *c.* 19.) from *Midapril* to *Midſummer*; on pain of having the nets and engines burnt for the firſt offence; for the ſecond, impriſonment for a quarter of a year; for the third, a whole year; and as the treſpaſs increaſeth, ſo ſhall the puniſhment. And overſeers ſhall be aſſigned to inquire hereof. 13 *Ed.* 1. *ſt.* 2. *c.* 47. That is, under the great ſeal, and by authority of parliament. 2 *Inſt.* 477.

And no perſon ſhall put in the waters of *Thamiſe*, *Humber*, *Ouze*, *Trent*, nor any other waters, in any time of the year, any nets called ſtalkers, nor other nets or engines whatſoever, by which the fry or breed of ſalmons, lampreys, or any other fiſh may in any wiſe be taken or deſtroyed; on the like pain. 13 *R.* 2. *ſt.* 1. *c.* 19.

And the waters of *Lon*, *Wyre*, *Merſee*, *Rybbyl*, and all other waters in *Lancaſhire*, ſhall be put in defence as to taking of ſalmons, from *Michaelmaſs* to *Candlemaſs*, and in no other time of the year. And conſervators ſhall be appointed in like manner. 13 *R.* 2. *ſt.* 1. *c.* 19.

And the juſtices of the peace (and the mayor of *London* on the *Thames* and *Medway*) ſhall ſurvey the offences in both the acts abovementioned; and ſhall ſurvey and ſearch all the wears in ſuch rivers, that they ſhall not be very ſtrait for the deſtruction of ſuch fry and brood, but of reaſonable wideneſs after the old aſſize uſed or accuſtomed; and they ſhall appoint under-conſervators, who ſhall be ſworn to make like ſurvey, ſearch and puniſhment. And they ſhall inquire in ſeſſions, as well by their office, as at the information of the under-conſervators, of all defaults aforeſaid, and ſhall cauſe them which ſhall be thereof indicted, to come before them; and if they be thereof convict, they ſhall have impriſonment, and make fine at the diſcretion of the juſtices: and if the ſame be at the information of an under-conſervator, he ſhall have half the fine. 17 *R.* 2. *c.* 9.

Spawn and fiſh under ſize.

3. No perſon, of what eſtate, degree, and condition ſoever he be, ſhall take and kill any young brood, ſpawn, or fry of fiſh; nor ſhall take and kill any ſalmon or trouts, not being in ſeaſon, being kepper or ſhedder; nor any pike or pikerel not being in length 10 inches fiſh or more; nor any ſalmon not being in length 16 inches fiſh; nor any trout not being in length eight inches fiſh; nor any barbel not being in length 12 inches: and no perſon ſhall fiſh or take fiſh by any device, but only with net or tramel, whereof the meſh ſhall be two inches and an half broad (angling excepted, and except ſmelts, loches, minnies, bulheads, gudgions, and eels): on pain of forfeiting 20 *l.* for every offence, and alſo the fiſh, nets, and engines. 1 *El.* *c.* 17.

And the conſervators of rivers may inquire hereof by a jury; and in ſuch caſe they ſhall have the fines. *id.*

The leet alſo may inquire hereof; and then the forfeiture ſhall go to the lord of the leet. And if the ſteward do not charge the jury therewith, he ſhall forfeit 40 *s.* half to the king, and half to him that ſhall ſue. And if the jury conceal the offence, he may impanel another jury to inquire of ſuch concealment; and if it is found, the former jury ſhall forfeit every one 20 *s.* to the lord of the leet *id.*

And

And if the offence is not presented in the leet, within a year, then it may be heard and determined at the sessions or assizes. (Saving the right of the conservators.) *id.*

4. No person shall fasten any nets over rivers, to stand continually day and night; on pain of an hundred shillings to the king. 2 *H.* 6. *c.* 15. Nets standing day and night.

III. Rules concerning fishing in or near the sea.

1. No person shall take, kill, or destroy any lobsters on the coast of *Scotland*, from *June* 1. to *Sept.* 1. on pain of 5 *l.* to be recovered by any person who shall inform and sue for the same, on a summary complaint before two justices of the shire on the coast where the offence shall be committed. 9 *G.* 2. *c.* 33. *s.* 4. Lobsters.

2. Every person who shall set up any new wear along the sea shore, or in any haven, harbour, or creek, or within five miles of the mouth of any haven or creek, shall, on conviction before one justice, or mayor, forfeit for every offence 10 *l.* half to the king, and half to him that shall sue; to be levied by the constables or churchwardens, by distress. 3 *J.* *c.* 12. *s.* 2. Erecting a new wear.

3. Every person who shall willingly take, destroy, or spoil any spawn, fry, or brood of any sea fish, in any wear or other engine or device whatsoever; shall forfeit for every offence 10 *l.* in like manner. 3 *J.* *c.* 12. *s.* 2. Spawn of sea fish.

4. And every person who shall fish in any haven, harbour, or creek, or within five miles of the mouth of any haven, harbour, or creek of the sea, with any draw-net, or drag-net under three inches mesh, *viz.* 1 ½ inch from knot to knot (except for the taking of smoulds in *Norfolk* only), or with any net with canvas, or other engine or device, whereby the spawn, fry, or brood of sea fish may be destroyed; shall in like manner forfeit such net, and also 10 *s.* for every offence, half to the poor, and half to him that shall sue. 3 *J.* *c.* 12. *s.* 2. Size of nets at sea.

But this act shall not extend to any net of lesser mesh, only for taking of herrings, pilchards, sprats, or lavidnian *id.* *s.* 3.

And by a subsequent statute, if any person shall use at sea, on the *English* coast, any traul-net, drag-net, or set-net, for catching of any fish (except herrings, pilchards, sprats or lavidnian) which hath the mesh less than 3 ½ inches from knot to knot; or which hath a false or double bottom; or shall put one net behind another; he shall, on conviction (after summons) before one justice where the offender resides or shall be found, on oath of two witnesses, in one month after the offence, forfeit the same, and also 20 *l.* half to the informer, and half to the poor, by distress; for want of sufficient distress, to be committed to gaol for 12 months; and the nets to be burnt. 1 *G.* *st.* 2. *c.* 18. Persons aggrieved may appeal to the next sessions. *id.*

5. By the same act of 1 *G.* *st.* 2. if any person shall bring to shore, or expose to sale any fish less than the following sizes from the eyes to the extent of the tail, *viz.* bret or turbet 16 inches, bril or pearl 14, codlin 12, whiting 6, bass and mullet 12, sole 8, place or dab 8, flounder 7 (except only such as shall be taken with Size of sea fish.

a hook, 22 *G.* 2. *c.* 49. *ſ.* 22.); he ſhall forfeit the fiſh to the poor; and alſo 20*s.* half to the informer, and half to the poor; to be levied in like manner: for default of payment, or of ſufficient diſtreſs, to be ſent to the next houſe of correction, or other common gaol of the county, to be ſeverely whipt, and kept to hard labour ſix days, and not longer than 14. Perſons aggrieved may appeal to the next ſeſſions.

IV. Importing fiſh.

May be ſeized.

1. If any ling, herring, cod, or pilchard, ſalmon, eels, or congers, taken by foreigners, ſhall be imported or expoſed to ſale; any perſon may ſeize the ſame, half for himſelf, and half for the poor. 18 *C.* 2. *c.* 2.

Penalty, 100 l.

2. And by the 1 *G. ſt.* 2. *c.* 18. and 9 *G.* 2. *c.* 33. no fiſh taken by, or received of any foreigner, except proteſtants inhabiting in *England*, ſhall be imported (except eels, ſtock fiſh, anchovies, ſturgeon, botarge, or cavear, lobſter, and turbets); on pain of 100 *l.* and the maſter of the veſſel 50 *l.* half to the poor, and half to the informer who ſhall ſue in 12 months in any of the courts at *Weſtminſter*.

For fiſhing, ſo far as the ſalt duties are concerned therein, may be conſulted that part of the title **Exciſe**, which treateth of the duties upon ſalt.

A. Appointment of a gamekeeper; on the 22 & 23 *C.* 2. *c.* 25. *ſ.* 2. 5 *An.* *c.* 14. *ſ.* 4. and 3 *G.* *c.* 11. *ſ.* 1.

I A. L. *eſquire, lord of the manor of* ——— *do hereby nominate, authorize, and appoint* A. G. *of* P. *in the county of* ——— *yeoman, to be my gamekeeper of and within my ſaid manor of* ——— *in the county aforeſaid, with full power, licence, and authority to kill any hare, pheaſant, partridge, or any other game whatſoever, in and upon my ſaid manor of* ——— *for my ſole uſe, and immediate benefit; and alſo to take and ſeize all ſuch guns, bows, greyhounds, ſetting dogs, lurchers, or other dogs to kill hares or conies, ferrets, tramels, lowbells, hays or other nets, hareſtipes, ſnares or other engines for the taking and killing of conies, hares, pheaſants, partridges, or other game, as within the precincts of my ſaid manor of* ——— *ſhall be uſed by any perſon or perſons who by law are prohibited to keep or uſe the ſame. Given under my hand and ſeal, this* ——— *day of* ——— *in the* ——— *year*, &c.

B. Warrant to ſearch for dogs and engines; on the 22 & 23 C. 2. c. 25. ſ. 2.

Weſtmorland. { To———

WHEREAS *complaint hath been made unto me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. I. *of* ——— *in the ſaid county, yeoman, that he the ſaid* A. I. *hath good ground to ſuſpect and doth ſuſpect that* A. O. *of* ——— *aforeſaid, in the county aforeſaid, yeoman, being a perſon in no reſpect qualified by the laws of this realm ſo to do, hath and keepeth in his cuſtody a greyhound* [*gun, net,* &c] *to kill and deſtroy the game: Theſe are therefore to command you in his majeſty's name to enter into, and ſearch in the day time, the houſes, outhouſes, and other places of him the ſaid* A. O. *at* ——— *aforeſaid, and if you there find any greyhound,* &c. *that you ſeize and keep the ſame for the uſe of* A. L. *eſquire, lord of the manor of* ——— *in which manor the ſaid houſes, outhouſes, and other places, are ſituate and do lie, or otherwiſe that you cut in pieces or deſtroy the ſame Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year,* &c.

C. Warrant againſt a perſon for keeping dogs and engines; on the 5 *An.* c. 14. ſ. 4.

Weſtmorland. { To———

WHEREAS *complaint hath this day been made before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the county of* ——— *aforeſaid, upon the oath of* A. I. *of* ——— *in the ſaid county, yeoman, that* A. O. *of the pariſh of* ——— *in the ſaid county, ſhoemaker, doth keep* [or *uſe*] *a greyhound,* &c. *to kill and deſtroy the game, he the ſaid* A. O. *not being qualified by the laws of this realm ſo to do, contrary to the ſtatutes in ſuch caſe made and provided: Theſe are therefore in his majeſty's name to command you, that you do forthwith upon ſight hereof apprehend the ſaid* A. O. *and bring him before me to anſwer the premiſſes, and to be further dealt with according to law. Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— .

D. Conviction of keeping dogs and engines; on the 5 *An.* c. 14. ſ. 4.

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, at* ——— *in the county aforeſaid,* A. I. *of* ——— *cometh before me* J. P. *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace of our ſaid lord the*

king in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, and giveth me the said justice to understand and be informed, that one A. O. *of the parish of* ——— *in the county aforesaid, shoemaker, on the* ——— *day of* ——— *in the* ——— *year aforesaid, at the parish aforesaid, in the county aforesaid, did keep and use a certain dog, called a greyhound, to kill and destroy the game, he the said* A. O. *not being qualified by the laws of this realm so to do, against the form of the statute in that case made and provided: And afterwards upon the aforesaid day, and in the year first abovementioned, he the said* A. O. *being brought before me by my warrant for that purpose, is asked by me the said justice, if he can say any thing for himself, why he the said* A. O. *should not be convicted of the premisses above charged upon him in form aforesaid; who pleadeth that he is not guilty of the said offence: nevertheless on the day aforesaid, in the year aforesaid, at* ——— *aforesaid, in the county aforesaid, one credible witness, to wit,* A. W. *of* ——— *yeoman, cometh before me the aforesaid justice, and before me the same justice upon his oath on the holy gospel to him then and there by me the aforesaid justice administred, deposeth, sweareth, and upon his oath aforesaid affirmeth, and saith, that the aforesaid* A. O. *on the* ——— *day of* ——— *aforesaid, in the year aforesaid, at the parish of* ——— *aforesaid, in the county aforesaid, did keep and use a certain dog called a greyhound, to kill and destroy the game: And thereupon the aforesaid* A. O. *the day and year aforesaid, at* ——— *aforesaid, in the county aforesaid, before me the same justice, by the oath of one credible witness aforesaid, according to the form of the statute aforesaid, is convicted: And for his offence aforesaid hath forfeited the sum of* 5 l. *of lawful money of* Great Britain, *to be distributed as the statute aforesaid doth direct. In witness whereof, I the said justice to this present record of the conviction aforesaid, have set my hand and seal at* ——— *aforesaid, in the county aforesaid, the day and year first abovewritten.*

If it shall be thought necessary to set forth specially, that the defendant had not such and such qualifications, then in reciting the testimony of the witness, the conviction should proceed thus: —— *did keep and use a certain dog called a greyhound, to kill and destroy the game; And that he the said* A. O. *then had not, nor yet hath, lands and tenements, nor any other estate of inheritance, in his own or his wife's right, of the clear yearly value of* 100 l. per annum, *nor for term of life; nor any lease nor leases of* 99 *years, nor for any longer term, of the clear yearly value of* 150 l. *and that he the said* A. O. *then was not, nor yet is, the son and heir apparent of an esquire, nor of any other person of higher degree; nor the owner nor keeper of any forest, park, chase, or warren; nor gamekeeper to any lord or lady of a manor: And thereupon* ———

E. Warrant to diſtrain 5*l.* for keeping dogs or engines; on the 5 *An. c.* 14. *ſ.* 4.

Weſtmorland. { To———

WHEREAS A. O. *of* ——— *in the ſaid county, ſhoemaker, is this day convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. I. *a credible witneſs, for that he the ſaid* A. O. *being a perſon not qualified by the laws of this realm ſo to do, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *did keep and uſe in the pariſh of* ——— *aforeſaid, in the county aforeſaid, a certain dog called a greyhound, to kill and deſtroy the game, by virtue whereof he the ſaid* A. O. *hath forfeited the ſum of* 5 l. *to be diſtributed as herein after is mentioned: Theſe are therefore in his ſaid majeſty's name, to command you to levy the ſaid ſum by diſtreſs of the goods of him the ſaid* A. O. *and if within the ſpace of* [*four*] *days next after ſuch diſtreſs by you taken, the ſaid ſum, together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods ſo by you diſtrained, and out of the money ariſing by ſuch ſale, that you do pay one half of the ſaid ſum of* 5 l. *to* A. I. *of* ——— *in the ſaid county, yeoman, who informed me of the ſaid offence, and the other half of the ſaid ſum of* 5 l. *to the overſeers of the poor of the pariſh of* ——— *aforeſaid, where the ſaid offence was committed, for the uſe of the poor of the ſaid pariſh; returning the overplus on demand unto him the ſaid* A. O. *the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs, being firſt deducted. And if ſufficient diſtreſs cannot be found of the goods of the ſaid* A. O. *whereon to levy the ſaid ſum of* 5 l. *that then you certify the ſame to me, together with the return of this precept. Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year of* ———.

F. Commitment for want of diſtreſs, for keeping dogs and engines; on the 5 *An. c.* 14. *ſ.* 4.

Weſtmorland. { To the conſtable of ——— in the ſaid county, and to the keeper of the houſe of correction at ——— in the ſaid county.

WHEREAS A. O. *of* ——— *in the ſaid county, ſhoemaker, was on the* ——— *day of* ——— *in the* ——— *year of* ——— *convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *a credible witneſs, for that he ſaid* A. O. *not being a perſon by the laws of this realm qualified ſo to do, on the* ——— *day of* ——— *in the year aforeſaid, did keep and uſe in the pariſh of* ——— *aforeſaid, in the county aforeſaid, a certain dog called a greyhound, to kill and deſtroy the game, by virtue whereof he the ſaid* A. O.

hath forfeited the ſum of 5 l. *of lawful money of* Great Britain; *And whereas on the ſaid* ——— *day of* ——— *in the year aforeſaid, I did iſſue my warrant to the conſtable of* ——— *to levy the ſaid ſum of* 5 l. *by diſtreſs and ſale of the goods of him the ſaid* A. O. *and to diſtribute the ſame according as is directed by the ſtatute in that behalf made; and whereas it duly appears to me, as well on the oath of the ſaid conſtable, as otherwiſe, that he the ſaid conſtable hath uſed his beſt endeavours to levy the ſaid ſum on the goods of the ſaid* A. O. *as aforeſaid, but that no ſufficient diſtreſs can be had whereon to levy the ſame: Theſe are therefore to command you the ſaid conſtable of* ——— *aforeſaid, to apprehend the body of the ſaid* A. O. *and him ſafely to convey to the houſe of correction at* ——— *in the ſaid county, and there deliver him to the ſaid keeper thereof, together with this precept. And I do alſo hereby command you, the ſaid keeper of the ſaid houſe of correction, to receive into your cuſtody in the ſaid houſe of correction the ſaid* A. O. *and him there ſafely to keep for the ſpace of three months: and for ſo doing this ſhall be your ſufficient warrant. Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year,* &c.

G. *Certiorari* bond, on a conviction for keeping dogs or engines; on the 5 *An. c.* 14. *ſ.* 2.

KNOW *all men by theſe preſents,* &c. *Whereas the abovebound* A. O. *was lately convicted before* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the county of* ——— *aforeſaid, of keeping and uſing at* ——— *aforeſaid in the ſaid county, a greyhound to kill and deſtroy the game; And whereas the ſaid* A. O. *hath ſince his ſaid conviction ſued out his majeſty's writ of* certiorari *to remove the ſame, and the proceedings thereupon, before the king himſelf wherever he ſhall be in* England *on* ——— [*the day of the return of the* certiorari]: *The condition of the above obligation is ſuch, that if the abovebound* A. O. *do and ſhall (according to the true intent and meaning of the ſtatute in ſuch caſe made) well and truly pay to the ſaid* A. I. *within* 14 *days after the ſame conviction ſhall be confirmed, or a* procedendo *granted thereupon, his full coſts and charges which he ſhall ſuſtain touching or concerning the ſaid conviction and removal thereof by the ſaid writ of* certiorari; *then the abovewritten obligation ſhall be void, otherwiſe of force.*

H. Warrant againſt a higler having game in his poſſeſſion; on the 5 *An. c.* 14. *ſ.* 2.

Weſtmorland { To the conſtable of ———

WHEREAS A. I. *of* ——— *hath this day made oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, that on the* ——— *day of* ——— *now laſt paſt, he the ſaid* A. I. *did ſee in the poſſeſſion of* A. O. *of* ——— *in the pariſh of* ——— *in the county aforeſaid, innkeeper,*

keeper, at ——— *aforesaid, in the parish and county aforesaid, in the house of him the said* A. O. *then and there one hare* [or, *did see him offer to sell one hare,* or as the case shall be] *he the said* A. O. *being no way qualified by the laws of this realm, to have the said hare in his custody or possession; against the form of the statute in that case made and provided: These are therefore to command you, to bring the said* A. O. *before me or some other of his majesty's justices of the peace for the said county, to answer the premisses, and to be further dealt withal according to law. Given under my hand and seal, the* ——— *day of* ——— *in the* ——— *year* &c.

I. Warrant to levy 5*l.* on the goods of a higler convicted of having game in his custody; on the 5 *An. c.* 14. *s.* 2.

Westmorland. { To the constable of ———.

WHEREAS A. O. *of* ——— *in the parish of* ——— *in the county aforesaid, higler, is on this present* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *duly convicted before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of* A. W. *a credible witness, for that he the said* A. O. *on the* ——— *day of* ——— *in the* ——— *year of* ——— *at the parish of* ——— *aforesaid, in the county aforesaid, had in his custody and possession one hare, he the said* A. O. *being no way qualified by the laws of this realm to have the said hare in his custody or possession, against the form of the statute in that case made, by reason whereof, he the said* A. O. *hath forfeited the sum of* 5 l. *These are therefore to require you to levy the said sum of* 5 l *by distress of the goods of him the said* A. O. *and if within the space of* [*five*] *days next after such distress by you taken, the said sum of* 5 l. *together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods so by you distrained as aforesaid, and out of the money arising by such sale, that you do pay one half of the said sum of* 5 l. *to* A. I. *of* ——— *yeoman, who informed me of the said offence, and the other half to the poor of the parish of* ——— *aforesaid, within which parish the said offence was committed; returning to him the said* A. O. *the overplus on demand, the reasonable charges of taking, keeping, and selling the said distress, being first deducted. And if sufficient distress cannot be had of the goods of the said* A. O. *that you certify the same to me together with the return of this precept. Given under my hand and seal the* ——— *day of* ——— *in the* ——— *year of* ———

K. Commitment

K. Commitment on the ſame for want of diſtreſs; on the 5 *An. c.* 14. *ſ.* 2.

Weſtmorland. { To the conſtable of ——— in the ſaid county, and to the keeper of the houſe of correction at ——— in the ſaid county.

WHEREAS A. O. *of* ——— *in the ſaid county, higler, was on the* ——— *day of* ——— *duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *of* ——— *a credible witneſs, for that he the ſaid* A. O. *on the* ——— *day of* ——— *in the* ——— *year of* ——— *at the pariſh of* ——— *aforeſaid, in the county aforeſaid, had in his cuſtody and poſſeſſion one hare, he the ſaid* A. O. *being no way qualified by the laws of this realm to have the ſaid hare in his cuſtody or poſſeſſion, againſt the form of the ſtatute in that caſe made, by reaſon whereof he the ſaid* A. O. *hath forfeited the ſum of* 5 l. *And whereas on the ſaid* ——— *day of* ——— *in the year aforeſaid, I did iſſue my warrant to the conſtable of* ——— *to levy the ſaid ſum of* 5 l. *by diſtreſs and ſale of the goods of him the ſaid* A. O. *and to diſtribute the ſame according as is directed by the ſaid ſtatute; And whereas it duly appears to me, as well on the oath of the ſaid conſtable of* ——— *as otherwiſe, that he the ſaid conſtable of* ——— *hath uſed his beſt endeavours to levy the ſaid ſum on the goods of the ſaid* A. O. *as aforeſaid, but that no ſufficient diſtreſs can be found whereon to levy the ſame; Theſe are therefore to require you the conſtable of* ——— *aforeſaid, to carry the ſaid* A. O. *to the ſaid houſe of correction at* ——— *aforeſaid, and deliver him to the ſaid keeper thereof, together with this precept. And you the ſaid keeper are hereby commanded to receive into your cuſtody in the ſaid houſe of correction him the ſaid* A. O. *and him there ſafely to keep for the ſpace of three months, without bail or mainprize; and for your ſo doing this ſhall be your ſufficient warrant. Given under my hand and ſeal the* ——— *day of* ———.

L. Mittimus for carrying a gun; on the 33 *H.* 8. *c.* 6. from Mr. *Dalton*.

Weſtmorland. { To the keeper of his majeſty's gaol at ——— in the county of ——— aforeſaid, and to his deputy or deputies there, and to every of them.

FORASMUCH *as this preſent day,* A. I. *of* ——— *yeoman, and* B. I. *of* ——— *yeoman, did arreſt and bring before me at* ——— *in the ſaid county, one* A. O. *late of* ——— *in the ſaid county, taylor, whom they had ſeen and found the ſame day (as they ſaid) ſhooting in a hand gun, charged with powder and hail ſhot, at a coney, in a certain place in* ——— *within the ſaid county, called* ——— *contrary to the law of the realm, and thereupon prayed that juſtice might be done in that behalf: I* John Moore,

Moore, *esquire, being the next justice of the peace in the said county to the place aforesaid, did then at* ——— *aforesaid, upon the said request, take the examination of the said* A. O. *and did also then and there hear the proofs of them the said* A. I. *and* B. I. *touching the said offence; And for that it did then manifestly appear unto me, as well by the testimonies of them the said* A. I. *and* B. I. *as also by the plain confession of him the said* A. O. *that he the said* A. O. *had not then lands, tenements, fees, annuities or offices, to the yearly value of an hundred pounds, and that he had shot in the said hand gun in manner and form as is aforesaid: I do send you herewithal the body of him the said* A. O. *as lawfully convicted of the said offence before me, requiring you in his majesty's name, to receive him into your said gaol, and him there safely to keep, until he shall have truly paid the pain and forfeiture of* 10 l. *of lawful money of* Great Britain, *laid upon him for his said offence by the statute made in the three and thirtieth year of the reign of King* Henry *the eighth; that is to say, the one moiety thereof to our sovereign lord the king, and the other moiety to them the said* A. I. *and* B. I. *the first bringers of him before me. And this shall be your sufficient warrant in this behalf. Hereof fail you not, as you will answer for your contempt at your peril. Given under my hand and seal at* ——— *aforesaid, in the county aforesaid, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

M. Record of the conviction for carrying a gun; on the 33 *H.* 8. *c.* 6. from Mr. *Dalton.*

Westmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— A. I. *of* ——— *yeoman, and* B. I. *of* ——— *yeoman, one* A. O. *late of* ——— *in the county aforesaid, taylor, found and saw, at* ——— *in the county aforesaid, the day and year aforesaid, with a hand gun charged with gunpowder and leaden hail shot, shooting and discharging the said gun, at a certain coney then being in a certain place there, called* ——— *against the form of the statute in that case made and provided; and therefore, the day and year aforesaid, him the said* A. O. *at* ——— *aforesaid, they did arrest, and at* ——— *aforesaid before me* ——— *esquire, one (and next unto the said place called* ———*) of the justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers trespasses and other misdemeanors in the same county committed, then with them did bring, requesting thereupon justice to be done; which request being heard, I the said* J. P. *at* ——— *aforesaid, the day and year aforesaid, duly thereupon have examined the aforesaid* A. O. *at* ——— *aforesaid, and the proofs of the aforesaid* A. I *and* B. I. *in this behalf have taken: And because that as well by the proofs aforesaid, as by the confession of him the said* A. O. *at* ——— *aforesaid, then and there it hath appeared to me manifestly, that the aforesaid* A. O. *at* ——— *aforesaid, when he had not in his own right, nor in the right of his wife, to his own use, nor any other to the use of the said* A. O. *had lands, tenements, fees, annuities or offices to the*

the yearly value of one hundred pounds, in the hand gun aforesaid, in manner and form aforesaid, did shoot, against the form of the statute aforesaid; I the said J. P. *the aforenamed* A. O. *at* ——— *aforesaid, the day and year aforesaid, to the next gaol of our said lord the king, at* ——— *in the county aforesaid (of the trespass aforesaid before me convicted) have committed, there to remain until the penalty and forfeiture of* 10l. *of lawful money of* Great Britain, *he shall truly pay or cause to be paid, to wit, one moiety thereof to our said lord the king, and the other moiety thereof to the said* A. I. *and* B. I. *the first bringers of the said* A. O. *before me as is aforesaid. In witness of all which, I the aforesaid* J. P. *to these presents have put my seal. Given at* ——— *aforesaid, the day and year first above written.*

N. Conviction for killing deer, from *Tremaine's entries*, 328, 329. which conviction was on the 13 *C.* 2. *c.* 10. but is here altered to grounds inclosed, to bring the offence within the 3 *W.* *c.* 10. which is done by the addition only of that single word [*inclosed*] with the alteration of the penalty.

Cumberland. BE *it remembred, that on the third day of* September *in the year of the reign of our lord* Charles *the* second *now king of* &c. *the* thirty second, *one* Benjamin Granger *of* ——— *gentleman, cometh before me* John Aglionby, *esquire, one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in the said county of* C. *at* G. *in the same county, and giveth me to understand and be informed, that one* James Dobson, *late of* ——— J. B. *late of* ——— *and* L. M. *late of* ——— *on the 25th day of* August *in the year of the reign of our said lord the now king, the* 32d *aforesaid, in a certain park then of the most noble* Henry *duke of* Norfolk, *called* Graystock *park, in the parish of* Graystock, *in the said county, then and long before and yet being ground inclosed, wherein deer then were and long before had been usually kept, unlawfully hunted, and a certain fallow deer of the said duke then in the same park killed, took, and carried away, without the consent of the said duke then owner of the said park, or of* Andrew Huddleston, *esquire, then being chiefly intrusted with the custody of the same park, against the form of the statute in such case made and provided: And afterwards, to wit, on the aforesaid* third *day of* September *in the* 32d *year aforesaid, two credible witnesses, that is to say,* J. H. *of* ——— *and* T. B. *of* ——— *come before me the said justice assigned* &c. *at* G. *aforesaid, and before me the said justice assigned* &c. *upon their oath on the holy gospel of* god *to them then and there by me the aforesaid justice assigned* &c. *by the authority of the statute aforesaid administred and given, do depose, swear, and say, and each of them doth depose, swear, and say, upon their oath aforesaid, that the aforesaid* J. D. J. B. *and* L. M. *on the aforesaid* 25th *day of* August *in the* 32d

year

year aforesaid, in the aforesaid park and ground inclosed, of the aforesaid duke of Norfolk, *in the parish of* Graystock *aforesaid, unlawfully hunted, and the aforesaid fallow deer of him the said duke, then in the said park and ground inclosed, took, killed, and carried away, without the consent of the same duke then owner of the said park and ground inclosed, or of the aforesaid* A. H. *esquire, then with the custody of the same park and ground inclosed as is aforesaid chiefly intrusted. And thereupon they the aforesaid* J. D. J. B. *and* L. M. *on the said* 3d *day of* September *in the* 32d *year aforesaid, before me the said justice assigned* &c. *by the oath of two credible witnesses aforesaid, according to the form of the statute aforesaid, are, and every of them is, convicted. And for the offence aforesaid, every of them the aforesaid* J. D. J. B. *and* L. M. *according to the form of the statute aforesaid, hath severally forfeited the sum of* 30l. *one third part thereof to the aforesaid* R. G. *the informer in this behalf as is aforesaid, another third part thereof to the use of the poor of the said parish of* G. *within which parish the offence aforesaid was committed, and the other third part thereof to the duke aforesaid, owner of the deer aforesaid. In witness whereof I the aforesaid justice to this present record of the conviction as aforesaid, have set my hand and seal, at* G. *aforesaid, on the day and year first abovementioned.*

John Aglionby.

O. Warrant of distress for hunting and killing deer; on the 3 *W. c.* 10. *s.* 2.

Westmorland. { To ———.

WHEREAS A. O. *of* ——— *yeoman, is this day duly convicted before me* J. P. *esquire, one of his majesty's justices assigned to the keep the peace in the said county, and also to hear and determine divers trespasses and other misdemeanors in the said county committed, by the oath of* A. W. *of* ——— *yeoman, a credible witness, for that he the said* A. O. *on the* ——— *day of* ——— *in the* ——— *year of* ——— *in a certain park, then of Sir* P. M. *baronet, in the parish of* ——— *in the said county, then and long before and yet being ground inclosed, wherein deer then were and long before had been usually kept, unlawfully did hunt, and a certain fallow deer of the said Sir* P. M. *baronet, then in the same park did kill, take, and carry away, without the consent of the said Sir* P. M. *baronet, then owner of the said park, or of any other person then chiefly intrusted with the custody of the same park, against the form of the statute in such case made and provided; by reason whereof he the said* A. O. *hath forfeited the sum of* 30l. *of lawful money of* Great Britain, *to be distributed as hereinafter is mentioned:*

These are therefore in his said majesty's name to command you to levy the said sum by distress of the goods and chattels of him the said A. O. *And if within the space of* [*six*] *days next after such di-*

ſtreſs by you taken, the ſaid ſum of 30 l. *together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods and chattels ſo by you diſtrained as aforeſaid; and out of the money ariſing by ſuch ſale, that you do pay one third part of the ſaid ſum of* 30 l. *to* A. I. *of* ——— *in the ſaid county, yeoman, who informed me of the ſaid offence; and one third part unto the churchwardens or overſeers of the poor of the ſaid pariſh of* ——— *for the uſe of the poor of the ſaid pariſh, and the other third part to the ſaid* ——— *owner of the ſaid deer; returning to him the ſaid* A. O. *the overplus upon demand, the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs being firſt deducted. And if ſufficient diſtreſs cannot be had or found, by and on which the ſaid ſum of* 30 l. *may be levied, you are hereby required to certify the ſame to me, within two days after the date of this preſent warrant. Given under my hand and ſeal, at* ——— *in the county aforeſaid, the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— .

P. Commitment for want of diſtreſs, for hunting and killing deer; on the 3 *W. c.* 10. *ſ.* 2.

Weſtmorland. { To the conſtable of ——— in the ſaid county, and to the keeper of the common gaol at ——— in the ſaid county, and to the chief officer of the market town of ——— in the ſaid county, and to every of them.

WHEREAS A. O. *of* ——— *labourer, was on the* ——— *day of* ——— *duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, by the oath of* A. W. *of* ——— *yeoman, a credible witneſs, for that he the ſaid* A. O. *on the* ——— *day of* ——— *in the* ——— *year* ——— *in a certain park then of* ——— *eſquire, in the pariſh of* ——— *in the ſaid county, then and long before and yet being ground incloſed wherein deer then were and long before had been uſually kept, unlawfully did hunt, and a certain fallow deer of the ſaid* ——— *eſquire, then in the ſame park did kill, take and carry away, without the conſent of the ſaid* ——— *then owner of the ſaid park, or of any other perſon then chiefly intruſted with the cuſtody of the ſame park, againſt the form of the ſtatute in ſuch caſe made and provided; by reaſon whereof he the ſaid* A. O. *hath forfeited the ſum of* 30 l. *of good and lawful money of* Great Britain; *And whereas on the ſaid* ——— *day of* ——— *in the year aforeſaid, I did iſſue my warrant to the conſtable of* ——— *to levy the ſaid ſum of* 30 l. *by diſtreſs of the goods and chattels of him the ſaid* A. O. *and to pay over the ſaid ſum of* 30 l. *according as is directed by the ſtatute aforeſaid; And whereas it duly appears to me, as well on the oath of the ſaid conſtable of* ——— *as otherwiſe, that he the ſaid conſtable of* ——— *hath uſed his beſt endeavours to levy the ſaid ſum*

of 30l. *on the goods and chattels of the said* A. O. *as aforesaid, but that no sufficient distress can be found whereon to levy the same: Therefore in pursuance of the statute aforesaid, I do hereby command you the said constable of* ——— *him the said* A. O. *to apprehend and safely to convey to the said common gaol at* ——— *aforesaid in the county aforesaid, and him to deliver to the keeper thereof aforesaid, together with this precept: And I do hereby command you the said keeper of the gaol aforesaid, to receive into your custody in the said gaol him the said* A. O. *and him there safely to keep for the space of one whole year now next ensuing; saving that within the said year you deliver him the said* A. O. *to the chief officer of* ——— *being the next market town next adjoining to the place where the said offence was committed, or to his under officer or officers, together with this precept, who are hereby respectively required to set the said* A. O. *in the pillory in the said market town by the space of one hour on some market day. And hereof fail not, as you will respectively answer the same at your perils. Given under my hand and seal, at* ——— *in the said county, the* ——— *day of* ——— *in the year* ———.

Q. Warrant to search for venison or skins; on the 3 *W. c.* 10. *s.* 3.

Westmorland. { To the constable of ———.

WHEREAS A. I. *of* ——— *in the said county, yeoman, hath this day made oath before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, that divers fallow deer have of late been unlawfully killed in, and taken and carried away from the park and ground inclosed of* ——— *at* ——— *in the said county, and that he the said* A. I. *hath just cause to suspect, and doth suspect, that venison or the skins of deer, or toyls whereby to take and kill deer, are concealed in the houses, outhouses, or other places belonging to the said houses of* A. O. *of* ——— *yeoman, and* B. O. *of* ——— *yeoman, at* ——— *aforesaid in the county aforesaid: These are therefore in his said majesty's name, and by virtue of the statute in that case made and provided, to require you that you do forthwith upon sight hereof, enter into and search the said houses, outhouses, and other places belonging to the said houses, of them the said* A. O. *and* B. O. *at* ——— *aforesaid; and if on such search you shall there find any venison, or skin of any deer, or toyls aforesaid, that you do apprehend the person or persons, in whose houses, outhouses, or other places aforesaid, such venison, skin, or toyls shall be found, and him or them so apprehended do carry before some of his said majesty's justices of the peace in and for the said county, to be examined concerning the premisses, and further dealt withal according to law. Given under my hand and seal, the* ——— *day of* ——— *in the year* ———.

Gaming.

Gaming not an offence at common law.

1. MR. *Dalton* ſays, that playing at cards and dice, and the like, are not prohibited by the common law; neither are they *malum in ſe*, of their own natures, but only prohibited by ſtatute. *Dalt. c.* 46.

Gaming houſe a nuſance.

2. But it hath been ſaid, that all common gaming houſes are nuſances in the eye of the law, as being great temptations to idleneſs, and apt to draw together numbers of diſorderly perſons. 1 *Haw.* 198.

Gaming houſes prohibited by the 33 H. 8.

3. By the ſtatute of the 33 *H.* 8. *c.* 9. No perſon ſhall for his gain, lucre, or living, keep any common houſe, alley, or place of bowling, coyting, cloyſh cayls, half bowl, tennis, dicing table, or carding, or any unlawful game; on pain of 40*s.* a day. *ſ.* 11.

But it was reſolved upon this clauſe, in the third year of *J.* 1. that if the gueſts in an inn or tavern, call for a pair of dice or tables, and for their recreation play with them, or if any neighbours play at bowls for their recreation, or the like, theſe are not within this ſtatute; for altho' the games be uſed in any inn, tavern, or other houſe, yet if the houſe be not kept for gaiming, lucre, or gain, but they play only for recreation, and for no gain to the owner of the houſe, this is not within the ſtatute, nor is ſuch perſon that plays in ſuch houſe that is not kept for lucre or gain, within the penalty of that law. *Dalt. c.* 46.

And moreover, by the ſame ſtatute it is further enacted, that every perſon uſing and haunting any the ſaid houſes and plays, and there playing, ſhall forfeit 6*s.* 8*d.* 33 *H.* 8. *c.* 9. *ſ.* 12.

And all and every juſtices of the peace, mayors, ſheriffs, and other head officers, may enter all ſuch houſes and places, where ſuch games ſhall be ſuſpected to be holden; and as well the keepers of the ſame, as alſo the perſons there reſorting and playing, may take, arreſt, and impriſon, and keep in priſon, until the ſaid keepers have found ſureties to the king's uſe, to be bound by recognizance or otherwiſe, no longer to uſe, keep, or occupy any ſuch houſe, play, game, alley, or place; and alſo that the perſons there ſo found, be in like caſe bound by themſelves, or with ſureties, no more to play, haunt, or exerciſe from thenceforth, in, at, or to any of the ſaid places, or at any of the ſaid games. *id. ſ.* 14.

And the mayors, ſheriffs, bailiffs, conſtables, and other head officers within every city, borough, or town, ſhall make due ſearch weekly, or at the furtheſt once a month, in all places where any ſuch houſes or places ſhall be ſuſpected to be kept; and if they ſhall not make ſuch ſearch at the furtheſt once a month, if the caſe ſo require, every ſuch perſon offending ſhall forfeit 40*s.* for each month. *id. ſ.* 15.

And by the ſame act, no manner of artificer, handicraftſman, huſbandman, apprentice, laborrer, ſervant at huſbandry, journeyman,

man, or ſervant of artificer, mariners, fiſhermen, watermen, or any ſerving man, ſhall play at the tables, tennis, dice, cards, bowls, claſh coyting, logating, or any other unlawful game, out of *Chriſtmas*, on pain of 20*s.* and in *Chriſtmas* to play at the ſaid games only in their maſters houſes, or in their maſters preſence; and alſo no perſon ſhall at any time play at bowls in open places out of his garden or orchard, on pain of 6*s.* 8*d.* *id. ſ.* 16.

But any maſter may licenſe his ſervant to play at cards, dice, or tables with himſelf, or with any other gentleman openly in his houſe, or in his preſence. *id. ſ.* 22.

And any nobleman, or other perſon having 100*l.* a year, may command or licenſe his ſervants, or family of his houſe, to play within the precinct of his houſe, garden, or orchard, at cards, dice, tables, bowls, or tennis, as well amongſt themſelves, as others repairing to the ſame houſe. *id. ſ.* 23.

And all juſtices of the peace, mayors, bailiffs, ſheriffs, and other head officers, and every of them, *finding or knowing* any perſon uſing unlawful games, contrary to this act, may commit every ſuch offender to ward, there to remain without bail or mainpriſe, till he be bound by obligation to the king's uſe, in ſuch ſum as by the diſcretion of the ſaid juſtices or other ſuch officers ſhall be thought reaſonable, that they ſhall not from thenceforth uſe ſuch unlawful games. *id. ſ.* 16.

And by the 2 *G.* 2. *c.* 28. Where it ſhall be *proved on the oath of two witneſſes* before any juſtice of the peace, as well as where he ſhall find upon his own view, that any perſon hath uſed any unlawful game contrary to the ſaid ſtatute, the ſaid juſtice ſhall have power to commit him to priſon without bail, unleſs and until he ſhall enter into recognizance, with ſureties or without at the diſcretion of the juſtice, that he ſhall not from thenceforth play at or uſe ſuch unlawful game. *ſ.* 9.

And where any the forfeitures abovementioned ſhall be found within the precincts of any leet, the lord ſhall have one half, and the other half ſhall be to him that ſhall ſue in any of the king's courts: and elſewhere, they ſhall be half to the king, and half to him that ſhall ſue in like manner. 33 *H.* 8. *c.* 9. *ſ.* 18.

But by the 31 *El.* *c.* 5. All ſuits to be purſued upon any ſtatute (that is, any ſtatute then in force) for uſing any unlawful game, ſhall be ſued and proſecuted, or otherwiſe heard and determined, in the general quarter ſeſſions or aſſizes of the county where the offence ſhall be committed, or in the leet within which it ſhall happen, and not in any wiſe out of the county. *ſ.* 7.

And no privilege of parliament ſhall be allowed to any perſon, againſt whom a proſecution ſhall be commenced, for keeping any common gaming houſe, or place for playing at any prohibited game. 18 *G.* 2. *c.* 34. *ſ.* 7.

Gaming houſe within London, and 20 miles thereof.

4. By the 25 *G.* 2. *c.* 36. any houſe, room, garden, or other place, kept for publick dancing, muſick, or other entertainment of the like kind, in *London*, or within 20 miles thereof, without licence as hereafter following (except the theatres of *Drury-Lane*, *Covent Garden*, the *Hay-Market*, and other entertainments exerciſed by letters patents or licence of the crown, or of the lord

 chamberlain)

chamberlain) ſhall be deemed a diſorderly houſe or place, and the keeper thereof ſhall forfeit 100 *l.* with full coſts to him who ſhall ſue (in ſix months) in any of the courts at *Weſtminſter* And the perſon who ſhall appear to act as maſter, or as having the management of ſuch diſorderly houſe, ſhall be deemed the keeper thereof

Which ſaid licence ſhall be granted at the laſt preceding *Michaelmas* ſeſſions, and ſhall be ſigned and ſealed by four juſtices in open court, and afterwards be publickly read by the clerk of the peace, with the names of the juſtices ſubſcribing the ſame; and no licence ſhall be granted at any adjourned ſeſſions; nor ſhall any fee be taken for the ſame. And there ſhall be inſerted in ſuch licence, and made conditions thereof, that the words following ſhall be affixed in large capital letters over the door or entrance of every ſuch licenſed houſe or place, *viz. Licenſed purſuant to act of parliament of the twenty-fifth of king* George *the ſecond*; and that it ſhall not be opened before five in the afternoon. And in caſe of a breach of either of the ſaid conditions, the licence ſhall be forfeited, and revoked by the juſtices at the next ſeſſions, and ſhall not be renewed.

And to encourage proſecutions againſt perſons keeping bawdy houſes, gaming houſes, or other diſorderly houſes, the conſtable, on notice given him in writing by any two inhabitants of the pariſh, paying ſcot and lot, of any perſon keeping ſuch houſe, ſhall forthwith go with them to a juſtice of the peace; and ſhall (on their making oath that they believe the contents of ſuch notice to be true, and entring into a recognizance of 20 *l.* each to produce evidence of the offence,) enter into a recognizance of 30 *l.* to proſecute with effect ſuch perſon at the next ſeſſions or aſſizes, as to the juſtice ſhall ſeem meet: and on the conſtable entring into ſuch recognizance, the juſtice ſhall iſſue his warrant for bringing the accuſed perſons before him, and ſhall bind them over to appear at the ſaid ſeſſions or aſſizes, and ſhall alſo, if he thinks fit, demand and take ſurety for their good behaviour in the mean time.

And if the conſtable ſhall neglect or refuſe, upon ſuch notice, to go before a juſtice, or to enter into recognizance, or ſhall be wilfully negligent in carrying on the proſecution, he ſhall forfeit 20 *l.* to each of the ſaid inhabitants.

And on trial, any perſon may give evidence againſt the defendant, notwithſtanding his being a pariſhioner, or having entred into ſuch recognizance.

And the conſtable ſhall be allowed all the reaſonable expences of the proſecution, to be aſcertained by two juſtices; and ſhall be paid the ſame by the overſeers of the poor: and if ſuch perſon be convicted, the overſeers ſhall alſo forthwith pay 10 *l.* to each of ſuch inhabitants, on pain of forfeiting double to the ſaid perſons.

And no indictment of ſuch offence ſhall be removed by *certiorari*.

Loſing 10l. at a time.

5. By the 9 *An. c.* 14. Any perſon who ſhall at any time or ſitting, by playing at cards, dice, tables, or other game whatſoever, or by betting on the ſides of ſuch as do play, loſe to any one

one or more persons so playing or betting, in the whole the sum or value of 10*l.* and shall pay or deliver the same, or any part thereof; the person so losing and paying or delivering the same, shall be at liberty in three months to sue for and recover the same with costs, in any court of record: and if he shall not sue in three months, it shall be lawful for any person to sue for and recover the same and treble value, with costs; half to such person who shall sue, and half to the poor. *s.* 2.

And every person who shall so be liable to be sued for the same, shall be obliged and compellable to answer on oath such bill as shall be preferred against him, for discovering the sum of money or other thing so won. 9 *An. c.* 14. *s.* 3. 18 *G.* 2. *c.* 34. *s.* 3.

Or other game whatsoever] *M.* 15 *G.* 2. *Goodburn* and *Marley.* It was determined, that *horse races* are within these general words. *Str.* 1159.

6. And by the 18 *G.* 2. *c.* 34. If any person shall win or lose at play, or by betting, at one time, the value of 10*l.* or within the space of 24 hours the value of 20*l.* he shall be liable to be indicted for such offence, in six months, either in the king's bench or at the assizes; and being convicted, shall be fined five times the value of the sum won or lost, which (after such charges as the court shall judge reasonable, allowed thereout to the prosecutor and evidence) shall go to the poor. *s.* 8.

Losing 10l. at a time, or 20l. in 24 hours.

And if any offender shall discover another offender, so that he be convicted, the discoverer shall be discharged from all penalties by reason of such offence, if not before convicted thereof, and shall be admitted as an evidence to prove the same. *s.* 9.

But nothing in this act shall repeal the aforesaid act of 9 *An. id. s.* 10.

7. If any person shall play at cards, dice, tables, tennis, bowls, kittles, shovelboard, or any other pastime or game whatsoever (other than for ready money) or bet on the sides of such as shall play, and shall lose any sum or other thing, exceeding 100*l.* at any one time or meeting, upon ticket, or credit, or otherwise, and shall not pay down the same at the time when he shall lose the same; in such case he shall not be bound to make it good, but the contract for the same, and for every part thereof, and all assurances and securities for the same shall be void; and the winner shall forfeit treble value of all such sums as he shall so win above 100*l.* half to the king, and half to him that shall sue in one year in the courts at *Westminster*, with treble costs. 16 *C.* 2. *c.* 7. *s.* 3.

Losing above 100l. at a time.

8. And all notes, bills, bonds, judgments, mortgages, or other securities, where the whole or any part of the consideration shall be for money or any other valuable thing, won by playing at cards, dice, tables, tennis, bowls, or other game whatsoever; or by betting on the sides of such as do game; or for the reimbursing or repaying any money knowingly lent or advanced, at the time and place of such play, to any person so gaming or betting, or that shall (during such play) so play or bett,—shall be void: And where such securities shall be of lands, or such as incumber or af-

Securities to be void.

fect the ſame; they ſhall enure and be to the ſole uſe and benefit of, and devolve upon ſuch perſon as might have ſuch lands, in caſe the ſaid grantor, or perſon ſo incumbring the ſame, had been dead: And all conveyances to hinder them from devolving on ſuch perſon, ſhall be void. 9 *An. c.* 14. *ſ.* 1.

Securities] *H.* 19 *G.* 2. *Borjeau* and *Walmſley*. The plaintiff and defendant gamed together, at toſſing up for five guineas at a time. And the plaintiff having won all the defendant's ready money, lent him ten guineas at a time, and won it, till the defendant had borrowed 120 guineas. In an action for money lent, it was inſiſted for the defendant, that by the 9 *An. c.* 14. the plaintiff could maintain no action; for by that act, all *ſecurities* for money lent to game with ſhall be void; and the borrowing on an agreement to pay, is *a ſecurity*. But *Lee* Ch. J. held, that this was not a caſe within the act, for there is not the word *contract*, as in the ſtatute of uſury; and the word *ſecurities*, as it ſtands in this act, muſt mean laſting liens upon the eſtate. The parliament might think there would be no great harm in a parol contract, where the credit was not like to run very high; and therefore confined the act to written ſecurities. Wherefore the plaintiff obtained a verdict for 126 *l.* *Str.* 1249.

Perſons ſuſpected of ſupporting themſelves by gaming.

9. And any two juſtices may cauſe to come, or to be brought before them, every perſon whom they ſhall have juſt cauſe to ſuſpect to have no viſible eſtate, profeſſion, or calling, to maintain themſelves by, but do for the moſt part ſupport themſelves by gaming; and if ſuch perſon ſhall not make it appear to the ſaid juſtices, that the principal part of his expences is not maintained by gaming, they ſhall require of him ſufficient ſecurities for his good behaviour for 12 months, and in default of his finding ſuch ſecurities, ſhall commit him to the common gaol, until he ſhall find ſuch ſecurities as aforeſaid. 9 *An. c.* 14. *ſ.* 6.

And if he ſhall, during the time for which he ſhall be bound, at any one time or ſitting, play or bet for any ſums or other thing exceeding in the whole the value of 20 *s.* ſuch playing ſhall be deemed a forfeiture of the recognizance. *ſ.* 7.

Cheating.

10. If any perſon ſhall by any fraud, unlawful device, or other ill practice in playing at cards, dice, tables, tennis, bowls, kittles, ſhovelboard; or by cockfightings, horſe races, dog matches, foot races, or other paſtimes or games; or by bearing a ſhare in the ſtakes; or by betting on the ſides of ſuch as ſhall play, act, ride, or run as aforeſaid,——win any ſum or other valuable thing; he ſhall forfeit treble the value, half to the king, and half to the party grieved (if he ſhall ſue in ſix months), otherwiſe to any perſon who ſhall ſue in one year next after the ſaid ſix months, in any of the courts at *Weſtminſter*, with treble coſts. 16 *C.* 2. *c.* 7. *ſ.* 2.

And by the 9 *An. c.* 14. If any perſon ſhall by any fraud or ſhift, couſenage, circumvention, deceit, or unlawful device, or ill practice whatſoever, in playing at cards, dice, tables, tennis, bowls, or any the games aforeſaid, or bearing a ſhare in the ſtakes, or betting on the ſides of ſuch as do play, win any ſum of money or

or other valuable thing, and ſhall be convicted thereof upon indictment or information; he ſhall forfeit five times the value of ſuch money or other thing ſo won, and ſhall be deemed infamous and ſuffer ſuch corporal puniſhment as in caſes of wilful perjury; and ſuch penalty to be recovered by ſuch perſon as ſhall ſue for the ſame, by ſuch action as aforeſaid. *ſ.* 5.

T. 9 *G.* 2. *K.* and *Luckup.* The defendant was convicted on an information upon this act, which ſays, that he ſhall forfeit five times the value, to be recovered by a common informer, upon conviction. And it was moved, that a fine ſhould be ſet upon the defendant, if he refuſed to ſpeak with the proſecutor. But by the court, All the judgment we can give is, *that he is convicted*; and a new action muſt be brought upon that judgment for the forfeiture, which was thought ſufficient to deter the offenders. In the caſe of recuſancy, there is no other judgment. And the defendant was diſcharged, without any fine or coſts. *Str.* 1048.

11. And for the preventing ſuch quarrels as may happen on the account of gaming; if any perſon ſhall aſſault and beat, or challenge to fight, any other perſon whatſoever, on account of any money won by gaming, playing, or betting, at any the games aforeſaid, he ſhall, on conviction thereof by indictment or information, forfeit to the king all his goods and chattels and perſonal eſtate whatſoever, and ſhall alſo ſuffer impriſonment without bail or mainpriſe, in the common gaol of the county where the conviction ſhall be had, during the term of two years. 9 *An.* *c.* 14. *ſ.* 8. Quarrelling.

12. It is generally provided by the ſeveral ſtatutes, that nothing therein ſhall hinder any perſon from playing at any the games aforeſaid, within any of the king's royal palaces, where he ſhall then reſide. Royal palaces excepted.

13. By the 10 & 11 *W.* *c.* 17. All lotteries are declared to be publick nuſances; and all grants, patents, and licences for ſuch lotteries, to be againſt law. *ſ.* 1. Lottery, a nuſance.

14. No perſon ſhall expoſe to be played, drawn, or thrown at, or ſhall play, draw, or throw at any lottery, either by dice, lots, cards, balls, or any other numbers or figures, or any other way whatſoever: and every perſon who ſhall expoſe to be played, drawn, or thrown at, any ſuch lottery, play, or device, ſhall forfeit 500 *l.* one third to the king, one third to the poor, and one third with double coſts to him that ſhall ſue in the courts at *Weſtminſter*; and the offenders ſhall likewiſe be proſecuted as common rogues, according to the ſtatutes in that caſe made and provided. 10 & 11 *W.* *c.* 17. *ſ.* 2. Keeping or playing at a lottery.

And every perſon who ſhall play, throw, or draw at any ſuch lottery, play, or device, ſhall forfeit 20 *l.* in like manner. *ſ.* 3.

And all juſtices of the peace, mayors, conſtables, and other civil officers ſhall uſe their utmoſt endeavours to prevent the drawing of any ſuch unlawful lottery, by all lawful ways and means; and every perſon who ſhall ſet up, or by writing or printing publiſh the ſetting up any ſuch unlawful lottery, with intent to have ſuch lottery drawn, ſhall forfeit 100 *l.* one third to the king, one

third to the poor, and one third with full costs to him who shall sue in the courts at *Westminster*. 9 *An. c.* 6. *s.* 56.

Insurances.

15. Every person who shall keep any office or place, for making insurances on marriages, births, christnings, or service, or any other office or place, under the denominations of sales of gloves, fans, cards, numbers, or the queen's picture, for the improvement of small sums of money, shall forfeit 500 *l.* one third to the king, one third to the poor, and one third with full costs to him who shall sue. And every printer, or other person, who shall by writing or printing publish the setting up or keeping any such office or place, shall forfeit 100 *l.* in like manner. 10 *An. c.* 26. *s.* 109.

Sales of lands or goods; and chances in publick lotteries.

16. Every person who shall keep any office or place, under the denomination of sales of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things, for the improvement of small sums of money; or shall sell or expose to sale the same or any of them, by way of lottery, or by lots, tickets, numbers, or figures; or shall make, print, advertise, or publish proposals or schemes for advancing small sums of money by several persons, amounting in the whole to large sums, to be divided among them by the chances of the prizes in some publick lottery; or shall deliver out tickets, to the persons advancing such sums, to intitle them to a share of the money so advanced, according to such proposals or schemes; or shall make, print, or publish, any proposal or scheme of the like nature, under any denomination whatsoever, —— and shall be thereof convicted, on oath of one witness, by two justices where the offence shall be committed, or the offender shall be found, he shall, over and above any penalties by any former act made against private lotteries, forfeit 500 *l.* one third to the king, one third to the informer, and one third to the poor, to be levied by distress and sale by warrant of such justices, and shall also by such justices be committed to the county gaol without bail for one whole year, and from thence till the said sum of 500 *l.* shall be paid: Provided that persons aggrieved may appeal to the next quarter sessions. And every person who shall be adventurer in, or any way contribute on the account of any such sales, lotteries, proposals, or schemes, shall forfeit double the sum contributed, with costs, half to the king, and half to him that shall sue in the courts at *Westminster*. 8 *G. c.* 2. *s.* 36, 37.

And by the 12 *G.* 2. *c.* 28. If any person shall erect, set up, continue, or keep, any office or place, under the denomination of a sale of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things, by way of lottery, or by lots, tickets, numbers or figures, cards or dice; or shall make, print, advertise, or publish proposals or schemes for advancing small sums by several persons, amounting in the whole to large sums, to be divided among them by chances of the prizes in some publick lottery established by act of parliament, or shall deliver out tickets to the persons advancing such sums, to intitle them to a share of the money so advanced, according to such proposals or schemes; or shall expose to sale any houses, lands, advowsons,

presentations

presentations to livings, plate, jewels, ships, or other goods, by any game, method, or device whatsoever, depending upon, or to be determined by any lot or drawing, whether it be out of a box or wheel, or by cards or dice, or by any machine, engine, or device of chance of any kind whatsoever;——he shall, on conviction before any justice of the peace (or mayor) on the oath of one witness, or view of such justice, or confession, forfeit 200 *l.* by distress and sale, by warrant of one justice of the county or town where the offence shall be committed; which said forfeiture (after deducting reasonable charges of the prosecution) shall go one third to the informer, and two thirds to the poor of the parish (except in *Bath*, where the said two thirds shall go to the poor of the hospital there.) *s.* 1.

And if the offender shall not have sufficient goods, whereon to levy the penalties, or shall not immediately pay or give security for the same; the justice, before whom he shall be convicted, may commit him to the common gaol, not exceeding six months. *s.* 8.

And if any witness shall neglect or refuse to appear, upon summons, or shall refuse to give evidence, or give false evidence; he shall forfeit 50 *l.* by distress, by warrant of the person issuing such summons; and if he have not sufficient goods whereon to levy the 50 *l.* he shall be committed to the common gaol for six months. 18 *G.* 2. *c.* 34. *s.* 4.

But if any person think himself aggrieved by the judgment of any justice or mayor, he may appeal to the next sessions, giving reasonable notice to the prosecutor, and entring into a recognizance before some justices of the peace where the conviction was made, with two sureties, on condition to try such appeal at such next sessions. And if the conviction shall be affirmed, the party appealing shall pay to the prosecutor treble costs. 12 *G.* 2. *c.* 28. *s.* 5.

And no conviction shall be quashed by the sessions for want of form; nor shall be removed by *certiorari*, till after determination in the sessions. *id. s.* 6.

And if any justice, or mayor, shall neglect his duty herein; he shall forfeit 10 *l.* with full costs, half to him that shall sue in any court of record or at the assizes, and half to the poor. *id. s.* 9.

Moreover, every such sale of houses, lands, advowsons, presentations, plate, jewels, ships, goods, or other things, by any game, lottery, machine, engine, or other device, depending upon any chance or lot, shall be void; and the same being exposed to sale in manner aforesaid, shall be forfeited to such person as shall sue for the same in any court of record, or at the assizes. *id. s.* 4.

And, finally, every person who shall be an adventurer in any of the said games, lotteries, or sales, shall forfeit 50 *l.* in like manner. *id. s.* 3.

17. The games of ace of hearts, faro, basset, and hazard, shall be deemed games or lotteries by cards or dice; and every person who shall set up, or keep these games, shall be liable to all

Ace of hearts, faro, basset, and hazard.

the abovementioned penalties, for ſetting up or keeping any the games or lotteries in this act mentioned. 12 *G.* 2. *c.* 28. *ſ.* 2.

And every perſon who ſhall play, ſet at, ſtake, or punt at any of the ſaid games, ſhall forfeit 50 *l.* in like manner. *ſ.* 3.

Paſſage. 18. Alſo the game of paſſage, and every other game with one or more die or dice, or with any other inſtrument, engine, or device in the nature of dice, having one or more figures or numbers thereon (back gammon, and the other games played with the back gammon tables, only excepted) ſhall be deemed games or lotteries by dice, within the ſaid act of 12 *G.* 2. *c.* 28.—13 *G.* 2. *c.* 19. *ſ.* 9.

Roly poly. 19. Alſo by the 18 *G.* 2. *c.* 34. No perſon ſhall keep any houſe, room, or place for playing, or ſuffer any perſon within ſuch place, to play at roly poly, or any other game with cards or dice already prohibited by the laws of this realm; and if any perſon ſhall keep ſuch houſe, or ſuffer any perſon to play at roly poly, or other game with cards or dice prohibited by law, he ſhall be liable to the penalties and proſecution, as by the ſaid act of the 12 *G.* 2. *c.* 28 —18 *G.* 2. *c.* 34. *ſ.* 1.

And if any perſon ſhall play at roly poly, or any game with cards or dice prohibited by law; he ſhall be liable to the penalties and proſecution, as by the ſaid act of the 12 *G.* 2.—18 *G.* 2. *c.* 34. *ſ.* 2.

Foreign lotteries. 20. If any perſon ſhall, by colour of any grant from any foreign prince or ſtate, ſet up any lottery, or undertaking in the nature of a lottery, under any denomination whatſoever; or ſhall make, print, or publiſh any propoſal for any ſuch lottery or undertaking; or ſhall ſell or diſpoſe of any ticket in any foreign lottery; and ſhall be convicted thereof, on oath of one witneſs, before two juſtices where the offence ſhall be committed, or the offender ſhall be found, he ſhall, over and above any penalties by former acts againſt unlawful lotteries, forfeit 200 *l.* one third to the king, one third to the informer, and one third to the poor, to be levied by diſtreſs by warrant of ſuch juſtices; and ſhall alſo by them be committed to the common gaol for one year, and from thence till the ſaid ſum of 200 *l.* be paid: provided, that perſons aggrieved may appeal to the next quarter ſeſſions. 9 *G.* *c.* 19. *ſ.* 4, 5.

And by the 6 *G.* 2. *c.* 35. If any perſon ſhall ſell, procure, or deliver any ticket, receipt, chance, or number in any foreign or pretended foreign lottery, or in any claſs, part, or diviſion thereof, or in any undertaking in the nature of a lottery; or ſhall ſell, procure, or deliver any ticket, receipt, chance, or number in any duplicate or pretended duplicate of any foreign or pretended foreign lottery; or ſhall receive any money for any ſuch ticket, receipt, chance, or number, or in conſideration of any money to be repaid in caſe any ticket or number in any foreign or pretended foreign lottery, or any claſs, part, or diviſion thereof, ſhall prove fortunate; and ſhall be convicted thereof in the courts at *Weſtminſter*, or on the oath of one witneſs before two juſtices where the offence ſhall be committed, or the offender ſhall be found; he ſhall forfeit 200 *l.* one third to the king, one third to the informer,

and one third to the poor; The ſame (in caſe of conviction before the juſtices) to be levied by diſtreſs by warrant of ſuch juſtices; and ſhall alſo be committed to the common gaol for a year, and from thence till the 200 *l.* be paid: provided, that perſons aggrieved may appeal to the next quarter ſeſſions. *ſ.* 29, 30.

21. No perſon, other than the plaintiff and defendant, ſhall be incapacitated from being a witneſs, touching any offence againſt the laws for preventing exceſſive and deceitful gaming, by reaſon of having played, betted, or ſtaked at any prohibited game. 18 *G.* 2. *c.* 34. *ſ.* 5.

How far an offender may be a witneſs.

Gaol and Gaoler.

For breaking of gaol, ſee Priſon breaking.

I. Building and repairing of gaols.
II. Who ſhall have the keeping of gaols.
III. Gaoler ſhall receive criminals.
IV. How they ſhall be maintained.
V. Spirituous liquors not to be ſold in gaols.
VI. How priſoners may be ſet on work.
VII. How they ſhall be reſtrained and kept.
VIII. How they ſhall be delivered.
IX. Of gaolers permitting eſcapes.
X. Concerning debtors.
XI. Concerning the priſons of the King's bench *and* Marſhalſea.

I. Building and repairing of gaols.

THE juſtices, or the greater number of them, within the limits of their commiſſion, upon preſentment of the grand jury at the aſſizes (or ſeſſions, 12 *G.* 2. *c.* 29. *ſ.* 13.) of the inſufficiency or inconveniency of the county gaol, may contract with any perſon for the building, finiſhing, or repairing the ſame. 11 & 12 *W.* *c.* 19. *ſ.* 1, 2. The expence thereof to be paid by the treaſurer, out of the general county rate. 12 *G.* 2. *c.* 29.

But this ſhall not extend to gaols held by inheritance; nor to charge any perſons in any town or liberty which have common gaols for felons, and commiſſioners of aſſize or gaol delivery, for any aſſeſſment to the making the common gaol for the ſhire. 11 & 12 *W.* *c.* 19. *ſ.* 5,

II. Who

II. Who ſhall have the keeping of gaols.

The gaol it ſelf is the king's, but the keeping thereof is incident to the office of the ſheriff, and inſeparable from it; except ſuch gaols whereof any perſons have the keeping by inheritance or ſucceſſion. 14 *Ed.* 3. *ſt.* 1. *c.* 10. 19 *H.* 7. *c.* 10. 2 *Inſt.* 589.

And therefore the ſheriffs ſhall put in ſuch keepers for whom they will anſwer. 14 *Ed.* 3. *ſt.* 1. *c.* 10.

But by the 3 *G.* *c.* 15. *ſ.* 10. None ſhall buy the office of gaoler, on pain of 500*l.* half to the king, and half to him that ſhall ſue.

And a gaoler in fact, is as much puniſhable for a miſdemeanor in his office, as if he were a rightful gaoler. 2 *Haw.* 134.

III. Gaoler ſhall receive criminals.

All felons ſhall be impriſoned in the common gaol, and not elſewhere. 5 *H.* 4. *c.* 10.

And if the gaoler refuſes to receive a felon, or take any thing for receiving him, he ſhall be puniſhed for the ſame by the juſtices of gaol delivery. 4 *Ed.* 3. *c.* 10. *Dalt.* *c.* 170.

But vagrants and other criminals, offenders, and perſons charged with ſmall offences, may for ſuch offences, or for want of ſureties, be committed either to the common gaol, or houſe of correction, as the juſtices in their judgment ſhall think proper. 6 *G.* *c.* 19.

IV. How they ſhall be maintained.

The gaoler cannot refuſe the priſoner victuals, for he ought not to ſuffer him to die for want of ſuſtenance. 1 *Inſt.* 295.

Which ſhall be provided for, by a ſum to be paid out of the general county rate, by the high conſtables, to ſuch ſufficient perſons dwelling nigh the gaols, as ſhall be appointed by the juſtices in open ſeſſions, who ſhall be there ready to receive it. 14 *El.* *c.* 5. 12 *G.* 2. *c.* 29.

V. Spirituous liquors not to be ſold in gaols.

By the 24 *G.* 2. *c.* 40. No licence ſhall be granted for retailing ſpirituous liquors within any gaol or priſon; and if the gaoler ſhall ſell, lend, uſe, or give away, or ſuffer the ſame (except by way of medicine) he ſhall forfeit 100*l.* half to the king, and half with full coſts to him who ſhall ſue. *ſ.* 17.

And any juſtice, on information on oath, that ſpirituous liquors are kept or diſpoſed of in ſuch gaol, may enter and ſearch, or iſſue his warrant to ſearch for, and ſeize, and ſtave, and deſtroy the ſame. *ſ.* 18.

And if any perſon ſhall endeavour to bring any ſpirituous liquors into ſuch gaol, the gaoler or his ſervants may apprehend and

and carry him before a juſtice; and if by the oath of one witneſs or otherwiſe ſuch perſon ſhall be convicted, he ſhall be committed to priſon or to the houſe of correction, not exceeding three months, unleſs he ſhall immediately pay down ſuch fine, not exceeding 20 *l.* and not leſs than 10 *l.* as the juſtice ſhall impoſe, to be paid half to the informer, and half to the poor of ſuch gaol. *ſ.* 19.

And a copy of the three clauſes above, ſhall be hung up in each gaol, on pain of the gaoler forfeiting 40 *s.* to be levied by warrant of one juſtice, on conviction on the oath of one witneſs: and any juſtice may enter and demand a ſight of ſuch copy, and if not ſhewn to him, he ſhall immediately convict ſuch gaoler; one half of the ſaid penalty to be to the informer, and the other (or the whole if there be no informer) to the poor of ſuch gaol. *ſ.* 20.

VI. How priſoners may be ſet on work.

The juſtices in their general ſeſſions, if they find it needful, may provide a ſtock of ſuch materials as they find convenient, for the ſetting poor priſoners on work, to be paid for by the treaſurer out of the general county rate; and may pay and provide fit perſons to overſee and ſet ſuch priſoners on work; and make ſuch orders for accounts concerning the premiſſes, as ſhall be thought needful, and for puniſhment of neglects and other abuſes, and for beſtowing the profits ariſing by the labour of the priſoners for their relief. Provided that the ſum to be ſo paid do not exceed the rate of 6 *d.* a week for any one pariſh. 19 *C.* 2. *c.* 4. *ſ.* 1. 12 *G.* 2. *c.* 29.

VII. How they ſhall be reſtrained and kept.

If any perſon ſhall be committed to any priſon, for any criminal or ſuppoſed criminal offence, he ſhall not be removed from thence, unleſs it be by *habeas corpus* or ſome other legal writ; or where he is removed from one priſon or place to another, within the ſame county, in order to his trial or diſcharge; or in caſe of ſudden fire or infection, or other neceſſity: on pain that the perſon ſigning any warrant for ſuch removal, and the perſon executing the ſame, ſhall forfeit for the firſt offence 100 *l.* and for the ſecond 200 *l.* to the party grieved. 31 *C.* 2. *c.* 2. *ſ.* 9.

But on emergent occaſions, as in caſe of infectious diſeaſes, the ſheriff or gaoler, with the advice and conſent of three or more juſtices (1 Q.) may, if they ſhall find it needful, provide other ſafe places (with the owners conſent) for the removal of ſick or other perſons out of the uſual gaols. 19 *C.* 2. *c.* 4. *ſ.* 2.

It ſeemeth generally in all caſes where a man is committed to priſon, eſpecially if it be for felony, or upon an execution, or but for a treſpaſs or other offence, every gaoler ought to keep ſuch priſoner in ſafe and cloſe cuſtody; ſafe, that he cannot eſcape: and cloſe, without conference with others or intelligence of things abroad. *Dalt. c.* 170.

And

And therefore if the gaoler ſhall licence his priſoner to go abroad for a time, and then to come again, or to go abroad with a keeper, tho' he come again, yet theſe are eſcapes. *Dalt. c.* 170.

And hereupon it is lawful for the gaoler to hamper a felon with irons to prevent his eſcape. 1 *H. H.* 601. *Dalt. c.* 170.

But the learned editor of *Hale's Hiſtory* obſerves, that this liberty can only be intended, where the officer has juſt reaſon to fear an eſcape; as where the priſoner is unruly, or makes any attempt to that purpoſe; but otherwiſe, notwithſtanding the common practice of gaolers, it ſeems altogether unwarrantable, and contrary to the mildneſs and humanity of the laws of *England*, by which gaolers are forbidden to put their priſoners to any pain or torment. And Lord *Coke*, 2 *Inſt.* 381. is expreſs, that by the common law it might not be done. 1 *H. H.* 601.

And if the gaoler keep the priſoner more ſtraitly than he ought of right, whereof the priſoner dieth, this is felony in the gaoler by the common law: and this is the cauſe, that if a priſoner die in gaol, the coroner ought to ſit upon him. 3 *Inſt.* 91.

But if a criminal, endeavouring to break the gaol, aſſault his gaoler, he may be lawfully killed by him in the affray. 1 *Haw.* 71. 1 *H. H.* 496.

VIII. How they ſhall be delivered.

By the 3 *H.* 7. *c.* 3. Thoſe that have the cuſtody of gaols, muſt certify the names of all priſoners, to the juſtices of gaol delivery, in order to their trial or diſcharge; on pain of 5 *l.*

And if a gaoler detains a priſoner in gaol after his acquittal, unleſs it be for his fees (not for meat, drink, or lodging) this is an unlawful impriſonment. 2 *Inſt.* 53.

And the gaoler muſt not diſobey a writ of *habeas corpus*, for want of his fees; but the court will not turn the priſoner over, till the gaoler be paid all his fees. 2 *Haw.* 151.

IX. Of gaolers permitting eſcapes.

If the gaoler voluntarily ſuffer a priſoner to eſcape, he ſhall be puniſhed in the ſame manner as the priſoner ought to have been who eſcaped: and if he negligently permit him to eſcape, he ſhall be puniſhed by fine and impriſonment. And the ſheriff ſhall anſwer for him. 2 *Haw.* 134, 5, 6.

But the principal gaoler is only finable for the voluntary eſcape of a felon ſuffered by his deputy; for no one ſhall ſuffer capitally for any crime, but he who is actually guilty of it. 2 *Haw.* 135.

But for a negligent eſcape ſuffered by his bailiff, the ſheriff is as much liable to anſwer, as if he had actually ſuffered it himſelf; and the court may charge either the ſheriff or bailiff for it: and if a deputy gaoler be not ſufficient to anſwer a negligent eſcape, his principal muſt anſwer for him. 2 *Haw.* 135.

X. *Concerning debtors.*

By an act in the 22 & 23 *C.* 2. *c.* 20. certain regulations are made, in relation to poor prisoners for debt, which are inforced and inlarged, and (in effect) superseded, by the 2 *G.* 2. *c.* 22. and therefore the act of the 22 & 23 *C.* 2. is only mentioned here, because if this latter act, which is but temporary, shall be permitted to expire, the said regulations will fall back upon the aforesaid statute of *C.* 2.

Which said act of the 2 *G.* 2. (which by the 21 *G.* 2. *c.* 33. is continued to *June* 1. 1754, *&c.*) enacteth as follows:

No sheriff, bailiff, or other officer, shall carry any person being in his custody by any writ, process, or warrant, to any tavern, alehouse, victualling house, or to the private house of such officer, or of any of his relations or tenants, without his consent; nor charge him for any wine, beer, ale, victual, tobacco, or any thing else, but what he shall freely call for; nor shall demand more than by law is allowed for such arrest, or waiting till the prisoner have given appearance or bail, or agreed with the party, or be sent to gaol; nor take any thing for keeping him out of gaol; nor shall carry him to gaol within 24 hours after the arrest; nor shall take more for a day's diet, or night's lodging, or other expences, than what shall be allowed by order of sessions, who are to make standing rules or orders for ascertaining such expences. *s.* 1.

(But by the 3 *G.* 2. *c.* 27. *s.* 6. which act hath the same continuance; If any person arrested shall refuse to be carried to some safe and convenient dwelling house of his own naming, so as it be in a market town (if he is there arrested), or within three miles of the place of arrest, not being his own house, nor out of the liberty, he may be carried to gaol within the 24 hours.)

And the sheriff shall deliver a printed copy of the above clause to every bailiff; and when the bailiff shall give security upon his entring into his office; shall make it part of the condition of such security, that he will shew and deliver a copy of the said clause to every person whom he shall arrest and carry to any such house, and permit him to read the same before any liquor or meat shall be called for; on pain of being punished as for a misdemeanor. *s.* 2.

And the gaoler shall suffer any prisoner to send for any victuals or other necessaries, and to have such bedding, linen, or other things, as he shall think fit. *s.* 3.

And the gaoler shall take no fees for commitment, chamber rent, or discharge, but what are now allowed by law, until such fees shall be settled by the justices in sessions. And tables shall be made of the fees when so settled, and shall be signed by three or more justices attending the settling, and shall be reviewed and confirmed or moderated, and then signed by the judges of assize, or one of them, together with three or more justices of the county. And also rules and orders for the better government of prisons, shall be made, and from time to time enlarged, inforced, or altered

altered as occaſion ſhall require, by the judges of aſſize or one of them, and three or more juſtices under their hands. And duplicates of ſuch tables of fees and rules, ſhall be inrolled by the clerk of the peace without fee, and ſhall be hung up and remain in every gaol.

And after ſuch table of fees ſettled and confirmed, no gaoler ſhall demand of any priſoner for debt, any greater fee than is therein allowed. (Regulations in *London*, *Middleſex*, and *Surrey*, to be made by the two chief juſtices, and chief baron, and the juſtices of the peace.) *ſ.* 4.

And on the petition of any priſoner complaining of any exaction or extortion, or other abuſe, by any gaoler or bailiff, to any of the judges or juſtices of aſſize, they may determine the ſame in a ſummary way, with full coſts. *ſ.* 5.

And the juſtices of the peace ſhall do their beſt endeavours, to diſcover charities given for the uſe of priſoners, and may ſend for writings, and examine perſons on oath, and order the ſame according to the intent of the donors: And liſts of ſuch charities ſhall be hung up in the gaol, and be regiſtred by the clerk of the peace. *ſ.* 6.

And if any ſheriff, bailiff, gaoler, or other officer, ſhall offend againſt this act, he ſhall (over and above the penalties by former laws) forfeit to the party grieved 50*l.* with treble coſts. *ſ.* 14.

The county gaol is the priſon for malefactors; but priſoners for debt, where eſcape lies againſt the ſheriff for their eſcaping, may be kept in what place the ſheriff pleaſes. L. *Raym.* 136.

But he ſhall not put, keep, or lodge priſoners for debt and felons together in one room or chamber; but they ſhall be put, kept, and lodged ſeparate and apart from one another in diſtinct rooms; on pain of forfeiting his office, and treble damages to the party grieved. 22 & 23 *C.* 2. *c.* 20. *ſ.* 13.

But it is ſaid, that a gaoler is no way puniſhable for keeping a debtor in irons. 2 *Haw.* 152. But it ſeemeth that this muſt at leaſt be underſtood with the qualification abovementioned.

XI. Concerning the priſons of the king's bench *and* marſhalſea.

The juſtices in *Eaſter* ſeſſions ſhall ſet down what ſums ſhall be ſent out of every county or place corporate, for the relief of the poor priſoners of the *king's bench* and *marſhalſea*, ſo as there be ſent out of every county yearly 20*s.* at the leaſt to each of the ſaid priſons; to be paid by the high conſtables out of the general county rate, to two ſuch treaſurers, or one of them, as by the more part of the juſtices of the county ſhall be elected to be treaſurers: which treaſurers, on the firſt day of *Trinity* term yearly, ſhall pay over the ſame to the lord chief juſtice of *England*, and knight marſhal, or to whom they ſhall appoint, taking their acquittance for the ſame, or in default of the chief juſtice, to the next moſt antient juſtice of the *king's bench*, equally to be divided

divided between the prisoners of the *king's bench* and *marshalsea* prisons. 43 *El. c.* 2. *s.* 12, 13, 14. 11 *G.* 2. *c.* 20. *s.* 1. 12 *G.* 2. *c.* 29.

And if the treasurer shall neglect or refuse, the king's bench may make a rule on him, requiring him to pay the same; and obedience to such rule may be inforced as other rules of the said court, at the cost and charges of the treasurer. 11 *G.* 2. *c.* 20. *s.* 2, 4.

And that the treasurer may be the better amenable to the said court, he shall within 30 days after his election or appointment, under the like penalty, transmit his name and place of abode to the clerk of the crown in the king's bench, to be entred by him; for which entry no fee shall be paid. *s.* 3.

Gauger. See Excise.
Gin. See Excise.
Glass. See Excise.
Good behaviour. See Surety.
Goss. Burning of it in forests. See Burning.
Grand larceny. See Larceny.
Greyhound. See Game.

Gunpowder.

Who may make gunpowder.

1. BY an act made in the 16 *C.* 1. *c.* 21. (to wit, in 1640, being the last statute of force in that king's reign) All subjects may make and sell gunpowder, and bring into the kingdom salt petre, brimstone, or any other materials for the making of it.

And by a statute made in the first year of the reign of king *James* the 2d, (which is also somewhat remarkable) it is enacted, that if any person shall obtain a grant for the sole making or importing of gunpowder, he shall incur a *præmunire*. 1 J. 2. c. 8. s. 3.

Shipping or landing of gunpowder, or firing of guns on the Thames above Blackwall.

2. By the 5 *G.* 2. *c.* 20. No master of any vessel outward bound, shall receive on board any gunpowder, either as merchandize or store for the voyage (except for his majesty's service) on the *Thames* above *Blackwall*; on pain of 5 *l.* for every 50 *lb.* weight, and so in proportion. *s.* 2.

And the master of every vessel coming into the *Thames*, shall land all the powder on board, either before arrival at *Blackwall*, or within 24 hours (if the weather will permit) after he comes to anchor there, or at the place of unloading; on pain of 5 *l.* for every 100 *lb.* weight. *s.* 3.

And

And if any officer of any ſhip (except the king's) ſhall, between *London bridge* and *Blackwall*, keep any gun loaded with ball, or fire any gun on board above *Blackwall*, before ſunriſing or after ſunſetting; he ſhall forfeit for ſuch gun loaded 5 *s.* and for ſuch gun fired 10 *s.* *ſ.* 4.

And the corporation of *Trinity houſe* at *Deptford ſtrond*, may appoint a perſon to inſpect veſſels; and if any ſuch officer obſtruct him, he ſhall forfeit 5 *l.* *ſ.* 5.

And the ſaid penalties ſhall go to the poor of the corporation. *ſ.* 6.

And two juſtices of *London*, or the reſpective counties where the offence ſhall be committed, ſhall on complaint in ten days ſummon the offender, or after oath made of the offence may iſſue their warrant for apprehending him, and on appearance or contempt may convict him either by oath of witneſſes, or confeſſion, or his own view, and levy the penalty by diſtreſs, and if not redeemed in five days, by ſale; for want of diſtreſs, he ſhall be impriſoned for three months, or till paid: and perſons aggrieved may appeal to the next ſeſſions. *ſ.* 7.

Keeping gunpowder in London.

3. No perſon, not being a dealer in gunpowder, ſhall keep more than 50 *lb.* or being a dealer, not more than 200 *lb.* longer than 24 hours, at any time in any houſe or place, or in any houſes or other places, either under the ſame roof, or by dividing the ſame, and diſpoſing thereof under different roofs, or in any yard or yards, within *London* and *Weſtminſter*, or the ſuburbs thereof, or within three miles of the tower, or of St. *James*'s; or within two miles of any magazine now erected (that is, in the year 1718,) for keeping gunpowder, belonging to the king for the uſe of the publick; or on the *Thames*, except in veſſels paſſing or detained by tides or bad weather (except carts and other carriages loading or unloading, or paſſing on the highway:) on pain of forfeiting the ſame, and the value thereof, with full coſts, to him who ſhall ſue in any court of record at *Weſtminſter* in 30 days. 5 *G.* *c.* 26. *ſ.* 1. 11 *G.* *c.* 23. *ſ.* 1. 15 & 16 *G.* 2. *c.* 32. *ſ.* 1.

And any juſtice of the peace within the ſaid limits, on demand by any inhabitants ſhewing a reaſonable cauſe, may iſſue his warrant to ſearch in the day time, for dangerous quantities of gunpowder, and break open any places if there be occaſion, and the ſearchers may ſeize, and may remove the ſame in 12 hours out of the ſaid limits, and detain the ſame till it be determined in the courts whether it be forfeited or not. 15 & 16 *G.* 2. *c.* 32. *ſ.* 2.

Perſons permitting others to keep it.

4. And perſons permitting others to keep gunpowder, in any places not belonging to the owners of ſuch gunpowder, ſhall forfeit 1 *s.* a pound 15 & 16 *G.* 2. *c.* 32. *ſ.* 3.

Carrying gunpowder in the ſtreets of London.

5. No perſon ſhall carry in the ſtreets of *London* or *Weſtminſter*, or the ſuburbs thereof, more than 20 hundred weight of gunpowder at one time; and all gunpowder carried in the ſaid ſtreets in any carts or carriages, ſhall be carried in covered carts or carriages, and the barrels cloſe jointed and hooped, and put into caſes of leather or canvaſs; and gunpowder carried by man or horſe, ſhall be put into caſes of leather or canvaſs, and entirely covered therewith:

with: and if any ſhall be carried otherwiſe, it ſhall be forfeited, and may be ſeized by any perſon to his own uſe, the offender being thereof convicted before two juſtices. 5 *G. c.* 26. *ſ.* 4.

Keeping gunpowder elſewhere.

6. By the 22 *G.* 2. *c.* 38. No perſon ſhall keep gunpowder for more than 24 hours at any one time, in greater quantity than 400 *lb.* weight, in any houſe or other place, in any city or the ſuburbs thereof, or in any market town, or within 100 yards thereof, or within two miles of any of the king's palaces, or one mile of any the king's magazines; nor ſhall keep for more than 24 hours at any time, a greater quantity than 3000 *lb.* weight in any houſe or other place. 22 *G.* 2. *c.* 38. *ſ.* 1.

And any two juſtices, on demand made, and a reaſonable cauſe aſſigned, by any pariſh officer or two houſeholders inhabiting where it is kept, ſhall iſſue their warrant for ſearching in the day time any houſe, ſhop, or other place, and breaking open the doors thereof, if there be occaſion; and if upon ſuch ſearch, more than 400 *lb.* weight, or 3000 *lb.* weight reſpectively as above ſhall be found, all exceeding the ſaid quantities ſhall be ſeized, and detained, and forfeited to any perſon who ſhall ſue in three months in any court at *Weſtminſter*; which court ſhall give judgment for recovery of the ſame or the value thereof with full coſts. *ſ.* 2.

But no penalty ſhall be incurred on account of a greater quantity than 30 hundred weight kept within any warehouſe or magazine already built for that purpoſe (that is, in 1749,) unleſs the juſtices at their quarter ſeſſions ſhall on complaint by two inhabitants near, adjudge the ſame to be dangerous, and until ſix months after ſuch adjudication; and provided the ſame be not ſituate in any city or the ſuburbs thereof, or in any market town, or within 100 yards thereof, or within two miles of any of the king's palaces, or one mile of any of the king's magazines. *ſ.* 7.

Erecting powder mills, a nuſance.

7. And it ſeems that erecting powder mills, or keeping powder magazines near a town, is a nuſance, for which an indictment or information will lie. For in the caſe of *K.* and *Williams*, *E.* 12 *W.* there was an indictment againſt *Roger Williams*, for keeping 400 barrels of powder near the town of *Bradford*, and he was convicted accordingly. And in *K.* and *Taylor*, *T.* 15 *G.* 2. The court granted an information againſt the defendant as for a nuſance, on affidavits of his keeping great quantities of gunpowder near *Malden* in *Surrey*, to the endangering the church and houſes where he lived. *Str.* 1167. It might as well have been ſaid, to the endangering the lives of his majeſty's ſubjects.

Carrying gunpowder elſewhere than in London.

8. No perſon ſhall convey at any one time, in any waggon or other carriage, a greater quantity than 2500 pounds weight; or more than 5000 pounds weight in any open veſſel on any river, within one mile of any city or market town: And all ſuch gunpowder ſhall be carried in covered carts and carriages; and the barrels ſhall be cloſe joined and hooped, and ſecured that no part thereof be ſcattered in the paſſage; on pain of being ſeized and forfeited to the informer, on proof of the offence before two juſtices. 22 *G.* 2. *c.* 38. *ſ.* 3.

Exception.

9. But none of the ſaid acts ſhall extend to any magazine belonging to the crown; or to hinder the trying of gunpowder by

his majesty's officers; or to the carrying of gunpowder to and from the king's magazines; or with forces in their march. 5 *G. c.* 26. *s.* 5. 11 *G. c.* 23. *s.* 4. 15 & 16 *G.* 2. *c.* 32. *s.* 6. 22 *G.* 2. *c.* 38. *s.* 5.

Sessions to appoint places for warehouses.

10. The justices in sessions shall, on application to them made, appoint convenient plots of ground, two miles distant from any city or market town, not exceeding two acres, with the use of convenient roads leading thereto, for erecting warehouses for keeping gunpowder in any quantity, first agreeing with the proprietor; and if they cannot agree, the said justices shall issue their warrant to the sheriff to impanel and return a jury, who shall on oath (to be administred by the said justices) inquire into the value of the ground, with the use of convenient roads leading thereto: And all such verdicts and inquisitions shall be kept with the records of the sessions, and be conclusive to all parties: And the said justices may send for persons interested, and examine the parties and witnesses on oath: And the sum to be assessed as aforesaid, not exceeding 30 years purchase, shall be paid to the proprietor; and on such payment, or in case of refusal to accept it, on leaving it with the said justices for the proprietor, the inheritance of the grounds, and use of the roads leading thereto, shall be vested in the purchasers and their assigns, for the purposes aforesaid, and not otherwise; And the warehouses to be built thereon, shall be built in such manner, as will most effectually render them safe and secure. 22 *G.* 2. *c.* 38. *s.* 6.

Working with hammers in warehouses.

11. If any person shall work with any iron hammer, or hammer plated with iron or steel, in any warehouse or place while any gunpowder is there; he shall on conviction within one month, by the oath of one witness, before one justice, forfeit 20 *s.* to the informer; to be levied by distress by warrant of such justice; for want of sufficient distress, to be committed to the house of correction, to be kept to hard labour not exceeding one month, nor less than 14 days. 11 *G. c.* 23. *s.* 3.

Doing any thing to indanger the firing it.

12. Every person employed in any storehouse where gunpowder is kept, or in carrying gunpowder from one place to another, being convicted before one justice, of wilfully committing any act, whereby such gunpowder may be in danger of taking fire, shall forfeit 5 *l.* to the informer, for every 100 pounds weight of gunpowder contained in such storehouse, or which he shall be employed in conveying; and on non-payment thereof, shall be committed to the publick gaol, without bail, not exceeding six months. 22 *G.* 2. *c.* 38. *s.* 4.

Guns. See Game.

Habeas corpus. See Bail.

Hackney coaches and chairs.

For the duty on coaches, see title Excise.

1. THE king may appoint persons not exceeding five, to be commissioners for regulating hackney coaches within the bills of mortality. 9 *An. c.* 23. *s.* 1. Commissioners.

2. Which commissioners shall under hand and seal license hackney coaches within the bills, not exceeding 800; and on every licence shall be reserved 5 *s.* a week, to be paid monthly. 9 *An. c.* 23. *s.* 2. Licensing.

And they shall also license hackney chairs within the bills aforesaid, not exceeding 400; reserving a rent of 10 *s.* a year, to be paid quarterly. 9 *An. c.* 23. *s.* 3. 10 *An. c.* 19. *s.* 158. 12 *G. c.* 12. *s.* 15.

3. Every coach and chair shall have a distinct mark on each side; and if any shall alter such mark, he shall forfeit 5 *l.* half to the informer, and half to the king. 9 *An. c.* 23. *s.* 4. Mark.

4. No horse to be used with any hackney coach, shall be under 14 hands high. 9 *An. c.* 23. *s.* 4. Size of the horses.

5. No person shall drive or let to hire any hackney coach without licence; on pain of 5 *l.* nor shall carry any person for hire in a hackney chair, without licence; on pain of 40 *s.* in like manner. 9 *An. c.* 23. *s.* 4. Penalty of driving without licence.

And by the 1 *G. st.* 2. *c.* 57. No unlicensed person shall ply with any coach or hearse, or shall let to hire any mourning coach, within the bills aforesaid, on pain of 5 *l.* as for driving unlicensed. *s.* 3.

And if any person shall drive a mourning coach to a funeral, not having a number on it, or except it be a coach attending the master or some of his family; on information given to the commissioners, they may summon the driver, and unless he prove an order from the master to attend at the funeral, the driver or the undertaker shall forfeit 5 *l.* *s.* 4.

6. And the coachman shall not take above the rate of 10 *s.* a day, reckoning 12 hours to the day; and by the hour, not above 18 *d.* for the first hour, and 12 *d.* for every hour after: And no person shall pay from any of the inns of court or thereabouts to any part of St. *James*'s or the city of *Westminster* (except beyond *Tuttle-street*) above 12 *d.* and the same prices from the same places to the inns of court or thereabouts; and from the inns of court or thereabouts, to the *Royal Exchange* 12 *d.* and if to the *Tower*, or *Bishopsgate-street*, or *Aldgate*, or thereabouts 18 *d.* and so from the said places to the said inns of court as aforesaid: and the like rates from and to any place, at the like distance, within the places beforementioned. 9 *An. c.* 23. *s.* 6. Rates.

And no person shall be obliged to pay above 12 *d.* for a coach for any distance (not above specified) not exceeding one mile and

four furlongs; nor above 1 *s.* 6 *d.* for any diſtance above a mile and four furlongs, and not exceeding two miles: And no chairman ſhall take more than the rate for any hackney coach driven two thirds of the ſame diſtance; on pain of 40 *s.* *ſ.* 7, 8.

By-laws.

7. And the commiſſioners may make by-laws, to bind all perſons licenſed, and the renters of ſuch licences, and the drivers. 9 *An.* *c.* 23. *ſ.* 16. 1 *G.* *ſt.* 2. *c.* 57. *ſ.* 1.

The ſame to be approved by the lord chancellor, commiſſioners of the great ſeal, two chief juſtices, and chief baron, or three of them. 9 *An.* *c.* 23. *ſ.* 17.

Driver exacting.

8. And if any hackney coachman ſhall refuſe to go at, or exact more for his hire, than according to the above act, or by-laws; he ſhall forfeit a ſum not exceeding 3 *l.* nor under 10 *s.* 1 *G.* *ſt.* 2. *c.* 57. *ſ.* 2.

Miſbehaving.

9. And if any perſon who ſhall drive a coach, or carry a chair for hire, acting under a perſon licenſed, ſhall be guilty of miſbehaviour, by demanding more than his fare, or giving abuſive language, or other rude behaviour; he ſhall, on conviction on oath, forfeit not exceeding 20 *s.* to the poor; and if he ſhall not be able, or refuſe to pay, he ſhall be committed to *Bridewell* or ſome other houſe of correction, to be kept to hard labour ſeven days, and receive the publick correction of the houſe before he be diſcharged. 9 *An.* *c.* 23. *ſ.* 49.

And on miſbehaviour of a coachman by abuſive language, or otherwiſe, the commiſſioners may revoke his licence. *ſ.* 19.

Perſon refuſing to pay.

10. And if any perſon ſhall refuſe to pay, or ſhall deface any coach or chair, any juſtice may grant his warrant to bring him before him; and on proof upon oath may award ſatisfaction to the party, and on refuſal to pay, may bind him over to the next ſeſſions, who may determine the ſame. 9 *An.* *c.* 23. *ſ.* 22.

Power of the juſtices.

11. The rents and penalties to be levied by diſtreſs, by warrant of three commiſſioners; which diſtreſs ſhall be ſold in ten days, returning the overplus, charges of the diſtreſs and of the warrant being firſt deducted (if on ſeven days notice they pay not the fine without ſuch warrant); and in default of diſtreſs, to be impriſoned till paid: and if any rent ſhall be unpaid for 14 days, the commiſſioners may withdraw the licence. 9 *An.* *c.* 23. *ſ.* 12.

And moreover, the breach of the by-laws, and of theſe rules and orders, may be puniſhed by any juſtice of the peace, mayor, or bailiff, where the offence ſhall be committed, in like manner as by the commiſſioners. 9 *An.* *c.* 23. *ſ.* 17. 1 *G.* *ſt.* 2. *c.* 57. *ſ.* 7.

Note; The clauſe in the act of the 12 *G.* *c.* 12. abovementioned, was only to continue for 18 years; but by the 16 *G.* 2. *c.* 26. it is continued to *June* 24, 1760, *&c.*

In which ſaid act of the 16 *G.* 2. there ſeems to be a miſtake, which hath unſettled all the other acts abovementioned. For whereas the 9 *An.* *c.* 23. ſo far as it relates to this ſubject, was to continue for 32 years, and afterwards by the 3 *G.* *c.* 7. *ſ.* 1. was made perpetual; and the ſaid act of the 10 *An.* *c.* 19. ſo far as it relates to this ſubject, was to continue for 31 years, and afterwards by the ſaid act of the 3 *G.* *c.* 7. *ſ.* 1. was alſo made perpetual;

and the ſaid act of the 1 *G. ſt.* 2. *c.* 57. which explains and amends the 9 *An. c.* 23. doth conſequently attend the fate of the ſame act of the 9 *An.* Now this act of the 16 *G.* 2. recites them all three as temporary only, and continues them along with the ſaid act of the 12 *G.* to *June* 24. 1760, *&c.* By which it may ſeem, that they will expire at that time, if they ſhall not be farther continued; or if that miſtake ſhall not in the mean time be rectified.

Hares. See Game.
Harepipes. See Game.
Harveſt. See Game.

Hawkers and pedlars.

1. THERE ſhall be paid by every hawker, pedlar, petty chapman, or any other trading perſon going from town to town, or to other mens houſes, and travelling either on foot, or with horſe, horſes, or otherwiſe (except as herein after excepted), carrying to ſell, or expoſing to ſale any goods, wares, or merchandizes, a duty of 4 *l.* a year. And every perſon ſo travelling with a horſe, aſs, mule, or other beaſt bearing or drawing burden, ſhall pay 4 *l.* a year for each horſe or beaſt, over and above the other 4 *l.* 9 & 10 *W. c.* 27. *ſ.* 1. Licence duty.

2. And every ſuch perſon, on receiving his licence, ſhall pay to whom the commiſſioners of the treaſury, or three of them, ſhall appoint for licenſers, or their deputy, half the duty, and give ſecurity by bond, with one or more ſureties, to the king, for payment of the other half at the end of ſix kalendar months, unleſs he ſhall chuſe to pay down the other half, in which caſe he ſhall be allowed after 2 *s.* in the pound for prompt payment. 9 & 10 *W. c.* 27. *ſ.* 2. Payment of the duty.

3. And the commiſſioners for theſe duties, or two of them, ſhall (on the receipt and ſecurity given as aforeſaid) grant licences to be by them ſubſcribed; for which ſhall be taken only 1 *s.* unleſs ſuch perſon travel with a horſe or beaſt, and in that caſe ſhall be paid only 2 *s.* above the duties. 9 & 10 *W. c.* 27. *ſ.* 4. Granting the licence.

4. And if any ſuch perſon be found trading as aforeſaid, without, or contrary to ſuch licence; or if on demand made by any juſtice of the peace, mayor, conſtable, or other peace officer of any town corporate or borough, where he ſhall ſo trade, ſhall not have his licence ready to be produced; *he ſhall forfeit* 12 *l.* half to the informer, and half to the poor of the pariſh wherein the offender ſhall be diſcovered; and for nonpayment thereof, ſhall ſuffer as a common vagrant, and be committed to the houſe of correction. 9 & 10 *W. c.* 27. *ſ.* 3. 3 & 4 *An. c.* 4. *ſ.* 4. Trading without a licence, or refuſing to ſhew it.

He ſhall forfeit 12 l.] *M.* 5 *G. K.* and *Beck.* Although the ſtatute here mentions nothing of *conviction*, yet nevertheleſs there ought to be a formal conviction; and a *certiorari* will lie for the removal of it. *Str.* 127.

And if any conſtable or other officer aforeſaid, ſhall refuſe or neglect, upon due notice, or his own view, to be aiding in the execution hereof, being thereunto required, and be thereof convicted on oath of one witneſs before one juſtice where the offence ſhall be committed; he ſhall forfeit 40*s.* by diſtreſs and ſale by warrant of ſuch juſtice, half to the poor, and half to the proſecutor. 9 & 10 *W. c.* 27. *ſ.* 7.

And any perſon may ſeize and detain any ſuch hawker, pedlar, petty chapman, or other trading perſon, till he produce his licence if he have any, or if he be found trading without a licence, for ſuch reaſonable time as he may give notice to the conſtable, churchwarden, overſeer, or ſome other pariſh officer, who ſhall carry ſuch perſon ſo ſeized before a juſtice; who ſhall, either on confeſſion, on proof by witneſs upon oath, convict the offender, and by his warrant cauſe the ſum of 12*l.* to be forthwith levied by diſtreſs and ſale of the offender's goods, wares, or merchandizes. 9 & 10 *W. c.* 27. *ſ.* 8.

Lending licences.

5. If any perſon ſhall lend or let out to hire his licence, he and alſo the perſon trading under colour thereof, ſhall forfeit each 40*l.* half to the king, and half to him that ſhall ſue in any court of record. 3 & 4 *An. c.* 4. *ſ.* 4.

Counterfeiting licences.

6. If any perſon ſhall forge or counterfeit, or travel with a forged or counterfeited licence; he ſhall forfeit 50*l.* half to the king, and half to him that ſhall ſue in the courts at *Weſtminſter*, and ſhall alſo be liable to be puniſhed for forgery. 9 & 10 *W. c.* 27. *ſ.* 5.

Exceptions.

7. But nothing herein ſhall prohibit any perſon from ſelling acts of parliament, forms of prayer, proclamations, gazettes, licenſed almanacks, or other printed papers licenſed by authority; or any fiſh, fruits, or victuals; nor to hinder any perſon who is the real worker or maker of any goods or wares, or his children, apprentices, ſervants, or agents, from carrying abroad, expoſing to ſale, or ſelling any of the ſaid goods and wares of his own making, in any publick fair, market, or elſewhere; nor any tinker, cooper, glazier, plummer, harneſs mender, or other perſon uſually trading in mending kettles, tubs, houſhold goods, or harneſs, from going about and carrying with him proper materials for mending the ſame. 9 & 10 *W. c.* 27. *ſ.* 9.

Alſo perſons trading in the woollen and linen manufactures, and ſelling the ſame by wholeſale, ſhall not be deemed hawkers, pedlars, or petty chapmen. 3 & 4 *An. c.* 4. *ſ.* 14.

Alſo no maker or wholeſale trader in *Engliſh* bone lace, ſhall be deemed a hawker, pedlar, or petty chapman. 4 *G. c.* 6.

Alſo nothing herein ſhall extend to hinder any perſon from ſelling any goods in any publick fair or market. 9 & 10 *W. c.* 27. *ſ.* 12.

And nothing herein ſhall give any power for the licenſing of ſuch perſons to ſell any goods in cities, boroughs, towns corporate, or market towns, otherwiſe than they might have done before. 9 & 10 *W. c.* 27. *ſ.* 15.

Treble coſts.

8. Perſons ſued for any thing done herein, may plead the general iſſue, and have treble coſts. 9 & 10 *W. c.* 27. *ſ.* 6.

Hawks

Hawks and hawking. See Game.

Hay.

THE 2 *W. Seſſ.* 2. *c.* 8. and 8 & 9 *W. c.* 17. do contain regulations concerning the ſelling of hay within the bills of mortality, which are not general enough to be here inſerted at large.

Hays. See Game.
Heath. See Game.
Hedge breaking. See Wood.

Hemp.

IT ſhall not be lawful to any perſon to water any hemp or flax, in any river, running water, ſtream, brook, or other common pond, where beaſts uſed to be watered; on pain that every perſon offending ſhall forfeit 20 *s.* half to the king, and half to the party grieved, or any other who ſhall ſue in any court of record, leet, or law day. 33 *H.* 8. *c.* 17.

Herring fishery.

IF any perſon ſhall damnify or deſtroy, without conſent of the ſociety, any of the nets, ſails, cordage, ſtores, or other materials, belonging to the ſaid ſociety; he ſhall, on conviction on the oath of one witneſs before one juſtice, forfeit to the ſociety treble value, by diſtreſs; and for want of ſufficient diſtreſs, to be committed to the houſe of correction to hard labour for any time not exceeding three months, or till ſatisfaction be made. Proſecution to be in ſix kalendar months. 28 *G.* 2. *c.* 14. *ſ.* 9.

Hides and Skins. See Leather.
High conſtable. See Conſtable.
High treaſon. See Treaſon.

Highways.

NOTE; Bridges repaired by the parish or township, and which consequently come under the cognizance of the surveyor of the highways, are comprehended under this title: County bridges are treated of under title Bridges.

For the ordering of streets in cities and market towns, see title Scavengers.

Most of the books are remarkably confused under this title; occasioned by a multiplicity of statutes, standing unrepealed, and yet altered perhaps five or six times, or oftner, by succeeding statutes. In order to extricate the subject out of which perplexity, I have endeavoured to make the heads of this title less general, selecting the law relating to each distinct article by it self.

But before I descend to particulars, it is proper to premise a clause in the statute of the 24 *G.* 2. *c.* 43. which makes a great alteration in the whole law relating to this title; and is as follows:

Whereas several acts have been made, as well for repairing and amending divers publick roads, as for punishing offences done or committed upon or to the highways, the good intentions whereof have not been answered, for want of due execution of the said laws; for remedy, and as a further encouragement to informers, All penalties and forfeitures imposed by this or any former act, shall be wholly given to, and vested in the informer or person who shall sue for the same, who may sue for and recover the same in the same manner as they are directed to be sued for and recovered by the said statutes respectively; or otherwise by action at law, in any of the courts of record at *Westminster*, in manner following, *viz.* Where any person shall be liable to a pecuniary penalty, the same may be sued for by action of debt, in which it shall be sufficient to declare, that the defendant is indebted to the plaintiff in the sum of ——— being forfeited by an act intitled ——— And where the forfeiture is of any horse, or other goods, by an action of trover, in which the value of such horse or other goods liable to the forfeiture shall be given in damages, without any seizure or demand thereof: And the plaintiff, if he recovers, shall have double costs. Provided, there shall not be more than one recovery for the same offence; and that no action be brought by virtue of this act, in any of the said courts, unless it be brought before the end of six calendar months after the offence committed. *s.* 11.

This being premised, I shall reduce the other laws concerning highways, under the following heads:

I What is a highway.

II. Concerning the special sessions for the highways.

III. Appointment of the surveyor.

IV. Surveyor's

IV. Surveyor's general duty on acceptance of his office.
V. Who shall repair.
VI. The proportion of labourers and carriages.
VII. Providing materials.
VIII. Concerning the six days work.
IX. Of annoyances in general.
X. Ditches adjoining to the highway.
XI. Water in the highway.
XII. Hedges adjoining to the highway.
XIII. Wood growing in the highway.
XIV. Straw, dung, stones, timber, laid in the highway.
XV. Gate erected across the highway.
XVI. Nusance by an unlawful number of horses or beasts in carriages.
XVII. Nusance by unlawful breadth and tire of wheels.
XVIII. Nusance of riding upon carriages, or the drivers otherwise misbehaving.
XIX. Pulling up blocks in the highway.
XX. Concerning guide posts.
XXI. Breadth and widening of highways.
XXII. Lands given to repairing highways.
XXIII. Assessment for the repair of highways.
XXIV. In what case the whole parish shall be contributory.
XXV. Further provision for the same by the common law.
XXVI. Presentment or indictment of the highways in general.
XXVII. Presentment by a justice on his own view.
XXVIII. Power of the leet to punish offences.
XXIX. Fines and the disposal thereof.
XXX. Surveyor's account.
XXXI. Appeal.
XXXII. Certiorari.
XXXIII. Turnpikes.

I. What

I. *What is a highway.*

Three kinds of highways.

1. There are three kinds of ways; 1. A foot way. 2. A foot and horse way, which is also a pack or drift way. 3. A foot, horse, and cart way. 1 *Inst.* 56.

Difference between a highway and a private way.

2. It seemeth that any one of the said ways, which is common to all the king's people, whether it leads directly to a market town, or only from town to town, and does not terminate there, but is also a thoroughfare to other towns, may properly be called a highway. And therefore the distinction which is taken in some books, concerning this matter, seems to be very reasonable; that every way from town to town may be called a highway, because it is common to all the king's subjects; and consequently that a nusance therein is a common nusance, and punishable by indictment: but that a way to a parish church, or to the common fields of a town, or to a private house, or perhaps to a village which terminates there, and is for the benefit of the particular inhabitants of such parish, house, or village only, may be called a private way, but not a highway, because it belongeth not to all the king's subjects, but only to some particular persons, each of which, as it seems, may have an action on the case for a nusance therein. 1 *Haw.* 201.

How far outlets are part of the highway.

3. It hath been holden, that if there be an highway in an open field, and the people have used time out of mind, when the ways are bad, to go by outlets on the land adjoining, such outlets are parcel of the way; for the king's subjects ought to have a good passage, and the good passage is the way, and not only the beaten track; from whence it follows, that if such outlets be sown with corn, and the beaten track be foundrous, the king's subjects may justify going upon the corn. 1 *Haw.* 201.

How far a river may be an highway.

4. In books of the best authority, a river common to all men is called an highway. 1 *Haw.* 201.

Highway changed.

5. It seemeth to be agreed, that an ancient highway cannot be changed, without the king's licence first obtained upon a writ of *ad quod damnum*, and an inquisition thereon found, that such a change will not be prejudicial to the publick; and it is said, that if one change a highway without such authority, he may stop the new way whenever he pleases; and it seemeth, that the king's subjects have not such an interest in such new way, as will make good a general justification of their going in it as a common highway, but that in an action of trespass brought by the owner of the land, against those who shall go over it, they ought to shew specially, by way of excuse, how the old way was obstructed, and the new one set out; also it is said, that the inhabitants are not bound to keep watch in such a new way, or to make amends for a robbery therein committed, or to repair it. 1 *Haw.* 201.

But by the 8 & 9 *W. c.* 16. Where any highway shall be inclosed, after a writ of *ad quod damnum* issued, and inquisition thereupon taken, any person aggrieved by such inclosure may complain thereof by appeal to the next quarter sessions, whose determination

termination ſhall be final; and if no appeal be made, the inquiſition and return, entred and recorded by the clerk of the peace at the quarter ſeſſions, ſhall be binding to all perſons. *ſ.* 6.

However it is certain, that a highway may be changed by the act of god; and therefore it hath been holden, that if a water which has been an ancient highway, by degrees changes its courſe, and goes over different ground from that whereon it uſed to run, yet the highway continues in the new channel, in the ſame manner as in the old. 1 *Haw.* 202.

To whom the freehold of an highway belongeth.

6. The freehold of the highways is in him that hath the freehold of the ſoil; but the free paſſage is for all the king's liege people. 2 *Inſt.* 705.

H. 8 *G.* 2. Sir *John Lade* againſt *Shepherd.* Upon trial of an action of treſpaſs, a caſe was made; that the place where the ſuppoſed treſpaſs was committed, was formerly the property of the plaintiff, who ſome years ſince built a ſtreet upon it, which has ever ſince been uſed as a highway; that the defendant had lands contiguous, parted only by a ditch, and that he laid a bridge over the ditch, the end whereof reſted on the highway. And it was inſiſted for the defendant, that by plaintiff's making it a ſtreet, it was a dedication of it to the publick; and therefore however he might be liable to an indictment for a nuſance, yet the plaintiff could not ſue him as for a treſpaſs on his private property. But by the court; It is certainly a dedication to the publick, ſo far as the publick has occaſion for it, which is only for a right of paſſage: but it never was underſtood to be a transfer of the abſolute property in the ſoil. So the plaintiff had judgment. *Str.* 1004.

II. Concerning the ſpecial ſeſſions for the highways.

Special ſeſſions.

1. The juſtices, in their reſpective diviſions, ſhall once in four months (on pain of 5 *l.*) hold a ſpecial ſeſſions for the highways, and ſhall thereunto ſummon all the ſurveyors, and give them a charge, and declare unto them their duty. 3 *W. c.* 12. *ſ.* 9, 11.

2. And one of the ſaid ſeſſions ſhall be holden on *Jan.* 3. yearly, or within 15 days after. 3 *W. c.* 12. *ſ.* 3.

III. Appointment of the ſurveyors.

Surveyors appointed.

1. On *Dec.* 26. yearly, unleſs it be *Sunday*, and then on the 27th, the conſtable, churchwardens, ſurveyors of the highways, and inhabitants in every pariſh, ſhall aſſemble, and the major part of them ſhall make a liſt of the names of a competent number of the inhabitants in their pariſh, who have an eſtate in lands, tenements, or hereditaments in their own or their wives right, of 10 *l.* a year, or a perſonal eſtate of the value of 100 *l.* or are occupiers or tenants of houſes, lands, tenements, or hereditaments, of 30 *l.* a year, if any ſuch there be, or if there be no ſuch perſons in the pariſh, then the ſaid liſt to be of the moſt ſufficient inhabitants. 3 *W. c.* 12. *ſ.* 3.

2. And ſhall return ſuch liſt to the ſpecial ſeſſions to be held for that purpoſe within the diviſion, on *Jan.* 3. or within 15 days after;

after; of the time and place of which ſeſſions ſo to be holden, the ſaid juſtices ſhall give notice (A) to the conſtables, churchwardens, and ſurveyors, at leaſt ten days before. 3 *W. c.* 12. *ſ.* 3.

3. And if the conſtables, churchwardens, and ſurveyors ſhall not return ſuch liſt, every of them making default ſhall forfeit 20 *s.* by diſtreſs, by warrant of two of the ſaid juſtices, or in default thereof, of any neighbouring juſtices. 3 *W. c.* 12. *ſ.* 4.

4. And the ſaid juſtices ſhall then and there, out of the ſaid liſts, according to their diſcretion, and the largeneſs of the pariſh, by warrant under their hands and ſeals (B), nominate and appoint one, two or more, as they ſhall think fit and approve of, to be ſurveyor or ſurveyors of the highways of every pariſh or town within the diviſion for the year enſuing. 3 *W. c.* 12. *ſ.* 3.

5. Which nomination and appointment ſhall by the conſtables or ſurveyors be notified to the perſon ſo nominated, within ſix days after ſuch nomination, by ſerving him with the ſaid warrant, or by leaving the ſame, or a true copy thereof, at his houſe or uſual place of abode; and from thenceforth he ſhall be ſurveyor. 3 *W. c.* 12. *ſ.* 3.

6. If he ſhall not take upon him, and execute the office, he ſhall forfeit 5 *l.* in like manner. 3 *W. c.* 12. *ſ.* 3.

7. And in caſe of ſuch neglect or refuſal, the ſaid juſtices ſhall appoint others in like manner, who ſhall execute the office, on the like penalty. 3 *W. c.* 12. *ſ.* 3.

IV. Surveyor's general duty on acceptance of his office.

Receiving the former ſurveyor's account.

1. He ſhall receive what money remained in his predeceſſor's hands. 3 *W. c.* 12. *ſ.* 9.

Making a ſurvey of the roads.

1. He ſhall within 14 days after acceptance of his office, and ſo from time to time every four months, or oftner, if required thereunto by warrant of two juſtices, view all the roads, common highways, bridges, cauſeways, pavements, hedges, ditches, and watercourſes appertaining to ſuch highways, together with all nuſances, or incroachments thereupon, and give a particular and true account in writing upon oath, of the ſtate and condition of all ſuch highways, and more eſpecially of ſuch faults and defects as want to be repaired, and of the neglects of labourers, to the next ſpecial ſeſſions, to the end that the ſaid accounts may be carefully preſerved, and that at all future ſeſſions the juſtices of the diviſion may have full information of, and may be able to examine into the particular ſtate and condition thereof: And if he ſhall neglect to give ſuch account, he ſhall forfeit 5 *l.* by diſtreſs, by warrant of two juſtices of the diviſion, or in default thereof, of any neighbouring juſtices. 1 *G. ſt.* 2. *c.* 52. *ſ.* 2.

For which oath no fee ſhall be taken. *ſ.* 11.

Penalty for neglect of duty.

3. And there is a general penalty of 40 *s.* laid on him by the acts of 3 *W. c.* 12. and 1 *G. ſt.* 2. *c.* 52. for any neglect of his duty, on either of the ſaid acts, to be levied in like manner.

h

V. Who ſhall repair.

It ſeems to be agreed, that of common right (that is, by the common law) the general charge of repairing all highways lies on the occupiers of the lands in the pariſh wherein they are: But there is no doubt, but particular perſons may be burdened with the general charge of repairing a highway, in two caſes:

Pariſh in general to repair.

1. In reſpect of an incloſure of the land wherein it lies; as where the owner of lands not incloſed, next adjoining to the highway, incloſeth his lands on both ſides thereof; in which caſe, he is bound to make a perfect good way, and ſhall not be excuſed for making it as good as it was at the time of the incloſure, if it were then any way defective; becauſe, before the incloſure, the people uſed, when the way was bad, to go for their better paſſage, over the fields adjoining, out of the common tract, which liberty is taken away by the incloſure. 1 *Haw.* 202.

Repairing in reſpect of an incloſure.

And if the way is not ſufficient, any paſſenger may break down the incloſure, and go over the land, and juſtify it, till a ſufficient way is made. 3 *Salk.* 182.

Alſo it hath been holden, if one incloſe land on one ſide, which hath been anciently incloſed of the other ſide, he ought to repair all the way; but if there be not ſuch an ancient incloſure of the other ſide, he ought to repair but half that way; and it is ſaid, that wherever one is bound to repair a highway, in reſpect of an incloſure, and lays it open again as it was before, he ſhall be freed from the charge of repairing it. 1 *Haw.* 202.

2. A particular perſon may be bound to repair a highway, in reſpect of a preſcription; and it is ſaid, that a corporation aggregate may be compelled to do it, by force of a general preſcription, that it ought and hath uſed to do it, without ſhewing that it uſed to do ſo in reſpect of the tenure of certain lands, or for any other conſideration; becauſe ſuch a corporation in judgment of law never dies, and therefore if it were ever bound to ſuch a duty, it muſt needs continue to be always ſo; neither is it any plea, that ſuch corporation hath always done it out of charity, for what it hath always done, it ſhall be preſumed to have been always bound to do: but it is ſaid, that a perſon cannot be charged with ſuch a duty, by a general preſcription from what his anceſtors have done, unleſs it be for ſome ſpecial reaſon, as the having land deſcended from ſuch anceſtors, which are holden by ſuch like ſervice. 1 *Haw.* 202.

Repairing by preſcription.

Yet it ſeems, that an indictment charging a tenant in fee ſimple, with having uſed of right to repair ſuch a way by reaſon of the tenure of his land, is certain enough, without adding, that his anceſtors or thoſe whoſe eſtate he hath, have always ſo done; for that is implied. 1 *Haw.* 203.

But the indictment muſt ſet forth, where thoſe lands lie. 2 *H. H.* 181.

VI. The

VI. The proportion of labourers and carriages.

Proportion of labour.

1. Every perſon, for every ploughland in tillage or paſture that he ſhall occupy in the pariſh, ſhall find and ſend at every day and place appointed, one wain or cart, furniſhed after the cuſtom of the country with oxen, horſes, or other cattle, and all other neceſſaries meet to carry things convenient for that purpoſe, and alſo two able men with the ſame. 2 & 3 *P. & M. c.* 8. *ſ.* 2.

Every perſon] It hath been holden, that perſons in holy orders are within the purview of theſe ſtatutes, in reſpect of their ſpiritual poſſeſſions, as much as any other perſons whatſoever in reſpect of any other poſſeſſions; for the words are general, and there is no kind of intimation that any particular perſons ſhall be exempted more than others. 1 *Haw.* 204.

For every ploughland] Therefore if he occupies and keeps in his poſſeſſion ſeveral ploughlands in ſeveral towns, he ſhall be charged to find in each town or pariſh where ſuch ploughlands do lie, one cart or carriage, in like manner as if he were a pariſhioner in the ſeveral pariſhes. 18 *El. c.* 10. *ſ.* 4.

Ploughland] By the 7 & 8 *W. c.* 29. A ploughland, as to repairing highways, is limited to 50 *l.* a year.

That he ſhall occupy] It hath been holden, that notwithſtanding the words of the ſtatute extend only to the occupiers of land, yet if the owner neither occupy them, not let them, but ſuffer them to lie freſh, he ſhall be charged as much as if he had occupied them; for there is no reaſon that the publick ſhould ſuffer for his negligence. 1 *Haw.* 204.

In the pariſh] And if he ſhall occupy a ploughland lying in ſeveral pariſhes, he ſhall be chargeable within the pariſh where he dwelleth, in like manner as a perſon having a ploughland in any one pariſh. 18 *El. c.* 10. *ſ.* 3.

2. Alſo every perſon keeping a draught or plough in the pariſh, ſhall find and ſend one wain or cart in like manner, with two able men. 2 & 3 *P. & M. c.* 8. *ſ.* 2.

And it hath been holden, that he who keeps ſeveral draughts in a pariſh, is bound to ſend a team for each draught, whether he occupy any land in the pariſh or not. 1 *Haw.* 204.

3. And where there is no uſe of carts and teams for amending of highways, but the uſage is to carry materials on horſes backs or any other kind of carriage; the inhabitants ſhall ſend ſuch horſes or carriages, with able perſons to work with the ſame, under the like penalty as for carts and teams. 22 *C.* 2. *c.* 12. *ſ.* 8.

4. And if the ſaid carriages ſhall not be thought needful by the ſurveyor, then the perſon that ſhould have ſent ſuch carriage, ſhall for every carriage ſo ſpared, ſend two able men. 2 & 3 *P. & M. c.* 8. *ſ.* 2.

5. Moreover, beſides thoſe perſons who are obliged to ſend carriages, every other perſon (except in *London*) that ſhall be aſſeſſed

to

to the payment of any subsidy, to 5 *l.* in goods, or 40 *s.* in lands, shall find two able men. 18 *El. c.* 10. *s.* 2.

6. And every other householder, cottager, and labourer, able to labour, and being no hired servant by the year, shall by himself or one sufficient labourer, work on the said days. 2 & 3 *P. & M. c.* 8. *s.* 2.

VII. Providing materials.

Surveyor may take and carry away rubbish.

1. The surveyor may take and carry away of the rubbish or smallest broken stones of any quarry within the parish, without licence, controulment, or impeachment of the owner, so much as he shall judge necessary for repairing the ways. 5 *El. c.* 13. *s.* 3.

But he may not cause any rubbish to be digged out of a quarry, but only shall have such as shall be found there ready digged by the owner or his order. *s.* 4.

May gather stones.

2. And for default of any quarry, not being within his limits, or in default of rubbish not to be found there, he may gather stones lying upon any grounds within the parish, and meet to be used for such purpose; and thereof take and carry away so much as by his discretion shall be thought necessary to be employed in the amendment of the highways. 5 *El. c.* 13. *s.* 3.

May dig for gravel.

3. Likewise in default of such quarry, or in default of such rubbish in any such quarry, he may in the several ground of any person within his limits, and nigh adjoining to the highway, and wherein gravel, sand, or cinders are likely to be found, dig or cause to be digged for them. 5 *El. c.* 13. *s.* 3.

But he may not dig for the same, in any man's house, garden, orchard, or meadow. *id. s.* 4.

Nor shall he cause any more pits to be digged for gravel, in any several and inclosed ground than one only, nor shall the pit be in length or breadth above ten yards over; and he shall within a month cause the pit to be filled with earth at the costs of the parishioners; on pain of forfeiting to the owner of the soil, five marks, to be recovered by action of debt. *id. s.* 4.

And by the 26 *G.* 2. *c.* 28. If any person shall by reason of getting any gravel, sand, stones, chalk, or other materials, for repairing any highway, or for any other purpose whatsoever, make or cause to be made any pit or hole in any common, heath, or waste ground, he shall forthwith cause the same to be sufficiently fenced off during such time as it shall be continued open, and shall within 14 days after digging for such materials in such pit or hole, cause the same to be filled up, sloped down or fenced off, and so continued; and if he shall not fill up, slope down or fence off the same, and keep the said fence from time to time in good repair, one justice on view, or oath of one witness, may order him to fill up, properly slope down, or fence off the same, and where any fence shall be set up may order the same to be repaired; and if he shall not comply with such order in ten days after his receipt thereof, or the same being left at his usual place of abode, and due proof being made upon oath before any one justice, of the offence committed, of the service of such order, and

and of the refusal or neglect to comply therewith, such person shall forfeit not exceeding 10 *l.* nor less than 40 *s.* to be laid out in filling up, sloping down, or fencing off the same, and towards the repair of the roads in the parish or place where the offence shall be committed, and in such manner as the justice shall direct; which, if not forthwith paid, shall be levied by distress, by warrant of such justice.

May purchase materials.

4. And whereas divers parishes and townships have not any gravel, stones, quarries, nor other materials, fit for repairing highways, and the surveyor is forced to lay out his own money for buying the same, it is enacted, that upon notice given by the surveyor to the special sessions, and oath made of what sum he hath laid out, the justices there, or two of them, shall by warrant under their hands and seals cause an equal rate to be made for reimbursing the surveyor, according to the method of the poor rate prescribed by the 43 *El. c.* 2. which rate being confirmed and allowed by the said justices in their special sessions, shall be collected by the surveyor; and if any person refuse to pay, it shall be levied by the surveyor by distress. 3 *W. c.* 12. *s.* 13.

And if the justices refuse to make a rate, they are compellable by *mandamus* from the king's bench, on affidavit of the money having been laid out; and the *mandamus* shall be directed to the justices of the county, and served on those of the private sessions. 1 *Haw.* 206.

Six days labour.

VIII. Concerning the six days work.

1. The surveyor shall appoint six days, for the providing stones, gravel, and other materials as aforesaid, and for working in the highways, having respect to the season of the year, and the weather, and giving notice publickly some convenient time before the several days. 22 *C.* 2. *c.* 12. *s.* 12.

2. And the justices at the special sessions, by writing under their hands and seals may order the reparation of those great roads which do most want repair, to be first amended, and at what time, or in what manner, the same shall be performed; according to which order the surveyor shall proceed; and if they make no such order, then according as to the surveyor shall seem most needful: And he shall take care, as far as possible, that the work be perfected before the time of harvest. 1 *G. st.* 2. *c.* 52. *s.* 3, 4.

3. At the said several days so appointed, all persons liable shall attend and work. 22 *C.* 2. *c.* 12. *s.* 12.

4. And every person and carriage shall have with them such shovels, spades, picks, mattocks, and other tools and instruments, as they make their own ditches and fences with, and such as are necessary for the work. 2 & 3 *P.* & *M. c.* 8. *s.* 2.

5. And they shall work eight hours each day, unless they be otherwise licensed by the surveyor. 2 & 3 *P.* & *M. c.* 8. *s.* 2.

6. And if any person shall fail to make his respective days labour, or neglect to send his horses and carriages, the surveyor shall give an account thereof in writing on oath to the special sessions,

and

and two juſtices there may levy by diſtreſs and ſale of the goods of ſuch defaulter (not having a reaſonable excuſe to be allowed by the ſaid juſtices) for every day labourer 1 *s.* 6 *d.* for a man and horſe 3 *s.* for a cart with two men 10 *s.* each day. 22 *C.* 2. *c.* 12. *ſ.* 9. 1 *G. ſt.* 2. *c.* 52. *ſ.* 2. Or the leet may inquire thereof, by fine and eſtreat. 2 *&* 3 *P. & M. c.* 8. *ſ.* 2.

IX. Of annoyances in general.

Annoyances and removal thereof.

1. There is no doubt, but that all injuries whatſoever to any highway, as by digging a ditch, or making a hedge overthwart it, or laying logs of timber in it, or by doing any other act, which will render it leſs commodious to the king's people, are publick nuſances at common law. 1 *Haw.* 212.

2. And by the common law any one may abate a nuſance to a highway, and remove the materials, but not convert them to his own uſe. 1 *Haw.* 214.

3. Alſo it ſeemeth, that an heir may be indicted for continuing an incroachment, or other nuſance to a highway, begun by his anceſtor; becauſe ſuch a continuance thereof amounts in the judgment of law to a new nuſance. 1 *Haw.* 214.

4. And by the ſtatute of the 3 *W. c.* 12. *ſ.* 8. If ſuch annoyances ſhall not be removed and amended within 30 days after notice given in the church immediately after ſermon, by the ſurveyor, he ſhall within 30 days remove and amend the ſame, and diſpoſe thereof for the repair of the highways. And he ſhall be reimburſed what charges he ſhall be at in ſo doing, by the parties who ſhould have done the ſame; and if they ſhall upon demand refuſe or neglect to pay the ſame, the ſurveyor ſhall apply to a juſtice of the diviſion, and in default thereof to a neighbouring juſtice of the county, and upon his making oath before ſuch juſtice of the notice to the defaulter in manner aforeſaid, he ſhall be repaid all ſuch his charges as ſhall be allowed to be reaſonable by the ſaid juſtice, to be levied by diſtreſs.

5. And by the 1 *G. ſt.* 2. *c.* 52. If they ſhall not be removed in 30 days, after due notice thereof given by the ſurveyor; the offender ſhall forfeit any ſum not exceeding 5 *l.* nor under 20 *s.* to be levied by warrant of the juſtices at the ſpecial ſeſſions, by diſtreſs. *ſ.* 8.

X. Ditches adjoining to the highway.

Ditches.

1. To ſuffer the ditches adjoining to a highway to be foul, by reaſon whereof it is impaired, is a nuſance at common law. 1 *Haw.* 212.

2. And it is ſaid, that he who hath lands next adjoining to a highway, is bound of common right to ſcour his ditches: But it is ſaid, that he who hath lands next adjoining to ſuch lands, is not bound by the common law ſo to do, without ſome ſpecial preſcription for that purpoſe. 1 *Haw.* 213.

3. And by the ſtatute of the 5 *El. c.* 13. *ſ.* 7. The ditches next adjoining to the highway ſhall be ſcoured by the owner of the ſoil which ſhall be incloſed with the ſame.

4. And by the 1 *G. ſt.* 2. *c.* 52. If any perſon who ought to ſcour and keep open ditches, adjoining to the highways, ſhall not amend the ſame in 30 days after due notice from the ſurveyor, or ſhall leave the earth of ditches ſcoured in the highways for the ſpace of eight days, he ſhall (on oath being made thereof at the ſpecial ſeſſions by the ſurveyor) forfeit for every eight yards of ditching not ſcoured and kept open 2 *s.* 6 *d.* by warrant of the juſtices at the ſaid ſpecial ſeſſions, by diſtreſs. And the ſurveyor ſhall ſcour and open the ſaid ditches. *ſ.* 8.

Water.

XI. Water in the highway.

1. The ſurveyor may turn any watercouſe or ſpring of water, being in the highway, into any ditch of the ſeveral ground of any perſon next adjoining to the highway, as by his diſcretion ſhall be thought meeteſt and moſt convenient. 5 *El. c.* 13. *ſ.* 6.

2. And every perſon that ſhall occupy any lands adjoining to the ſaid ground ſo adjoining to any highway, where any ditching or ſcouring ought to be, ſhall, as need ſhall require, ditch and ſcour in his ground ſo adjoining, whereby the water conveyed from the highway over the ground next adjoining, may have paſſage over the ſaid ground ſo next adjoining. 18 *El. c.* 10. *ſ.* 6.

3. And if any perſon who ought to ſcour and keep open uſual watercourſes, adjoining or near to the highways, and effectually to amend them, ſhall by the ſpace of thirty days after due notice thereof given by the ſurveyor, neglect or delay to do the ſame, he ſhall (on oath thereof being made by the ſurveyor, before the juſtices at the ſpecial ſeſſions) forfeit for every eight yards ſo not ſcoured and kept open, 2 *s.* 6 *d.* to be levied by warrant of the ſaid juſtices, by diſtreſs. And the ſurveyor ſhall ſcour and keep open ſuch ditches and watercourſes; and where the ditches and drains already made are not ſufficient to carry off the water, the ſurveyor may make new ones in and through the lands next adjoining or near to the highways, and keep them ſcoured, cleanſed, and open, and may come upon the lands with their workmen for that purpoſe. 1 *G. ſt.* 2. *c.* 52. *ſ.* 8. 3 *W. c.* 12. *ſ.* 12.

Hedges.

XII. Hedges adjoining to the highway.

1. It ſeemeth clear, that it is a nuſance at common law, to ſuffer the boughs of trees growing near the highway, to hang over the road in ſuch a manner, as thereby to incommode the paſſage. 1 *Haw.* 212.

2. And perhaps it is the better opinion, that he who hath trees next adjoining to the highway, and hanging over it to the annoyance of the people, is bound by the common law to lop the ſame; and it ſeems clear, that any perſon may juſtify the lopping ſuch trees, ſo far as to avoid the nuſance. 1 *Haw.* 213.

3. And

3. And by the ſtatute of the 7 *G.* 2. *c.* 9. it is provided, that if the ſurveyor on his view ſhall find any highway deep and foundrous, and the hedge adjoining to be ſo high as to prevent the benefit of the ſun and wind, he ſhall make a preſentment thereof to the juſtices at their ſpecial ſeſſions; which juſtices, or two of them, may by warrant ſummon the occupier of the lands adjoining to the highway, to appear at the next monthly or other publick meeting of the juſtices, in or near the diviſion, to ſhew cauſe why ſuch hedge ſhould not be new made, or cut low; and if ſuch perſon appear not, nor ſend ſome perſon to appear, or if it ſhall appear upon proof on oath that ſuch way is deep and foundrous, and damaged by the height of ſuch hedge, the ſaid juſtices, or two of them, ſhall iſſue a precept under hand and ſeal to the ſurveyor, to give or leave notice in writing at the uſual place of abode of ſuch perſon whoſe hedge was preſented, that he is thereby required to new make or cut low the ſaid hedge, within 30 days after ſuch notice (provided that ſuch notice be given between *September* 30. and *February* 1.) and in caſe of his refuſal or neglect to do the ſame within the ſaid 30 days, the ſurveyor ſhall cauſe the hedge to be new made or cut low, as he ſhall think moſt reaſonable, ſo as ſuch hedge be left at leaſt three foot high above the bank. *ſ.* 1.

And ſuch perſon ſhall repay to the ſurveyor ſuch reaſonable expences as he ſhall have been put to on that occaſion; and if he ſhall refuſe or neglect to repay the ſame, within 14 days after demand, the juſtices upon complaint thereof at their monthly or other publick meeting, in or near the diviſion, and due proof upon oath of ſuch expences of the ſurveyor, ſhall iſſue a precept under the hands and ſeals of them, or two of them, to the conſtable or other proper officer of the hundred, pariſh, or place, requiring him to levy the ſaid ſum by diſtreſs. *id. ſ.* 2.

But nothing herein ſhall alter the laws in relation to timber trees, which grow in hedges adjoining to the highways. *id. ſ.* 3.

XIII. Wood growing in the highway.

Wood.

No tree, buſh, or ſhrub, ſhall be permitted to grow in any highway not full 20 foot broad, but ſhall be cut down, grubbed up, and carried away by the owner of the land or ſoil, in ten days after notice given to him by the ſurveyor; on pain of 5*s.* by diſtreſs, by warrant of two juſtices of the diviſion, or in default thereof, of any neighbouring juſtices of the county. 3 *W. c.* 12. *ſ.* 6.

XIV. Straw, dung, ſtones, timber, laid in the highway.

Straw, dung, ſtones, timber.

1. There is no doubt, but that all obſtructions by laying ſtraw, dung, ſtones, logs of timber, and the like, in the highway, are nuſances at common law. 1 *Haw.* 212.

2. And it ſeemeth to be clear, that it is no excuſe for one who layeth ſuch logs in the highway, that he laid them only here and there, ſo that the people might have a paſſage by windings and turnings thro' the logs: yet it is ſaid to be no nuſance for the inhabitants of a town to unlade billets, and the like, in the ſtreet before their houſes, by reaſon of the neceſſity of the caſe, unleſs they ſuffer them to continue there an unreaſonable time after they are unloaded. 1 *Hawv.* 212.

3. And by the ſtatute of 3 *W. c.* 12. No perſon ſhall lay in any highway not being 20 foot broad, any ſtone, timber, ſtraw, dung, or other matter, whereby the ſame ſhall be any ways obſtructed or annoyed; on pain of 5*s.* by diſtreſs, by warrant of two juſtices of the diviſion, or in default thereof, of any neighbouring juſtices of the county. *ſ.* 4.

And if any timber, ſtone, hay, ſtraw, ſtubble, or other matter for the making of dung, or on any other pretence, ſhall be laid in any ſuch highway, whereby the ſame ſhall be any ways obſtructed or annoyed; the owner or poſſeſſor of the lands next adjoining, ſhall clear the way by removing the ſame, and ſhall take the ſame to his own uſe: and if he ſhall neglect ſo to do, for ten days after notice given to him by the ſurveyor, he ſhall forfeit 5*s.* in like manner. *ſ.* 5.

4. And by the 1 *G. ſt.* 2. *c.* 52. If any perſon who ought to remove ſuch annoyances, ſhall for 30 days after due notice thereof given by the ſurveyor, neglect or delay to do the ſame; he ſhall forfeit not exceeding 5 *l.* nor under 20*s.* by warrant of the juſtices at the ſpecial ſeſſions, by diſtreſs: and the ſurveyor ſhall remove the ſame. *ſ.* 8.

Gate.

XV. Gate erected acroſs the highway.

A Gate erected in a highway, is a common nuſance, becauſe it interrupts the people in that free and open paſſage which they before enjoyed, and were lawfully intitled to; but where ſuch a gate has continued time out of mind, it ſhall be intended that it was ſet up at firſt by conſent, on a compoſition with the owner of the land on the laying out the road, in which caſe the people had never any right to a freer paſſage than what they ſtill enjoy. 1 *Hawv.* 199.

XVI. Nuſance by an unlawful number of horſes or beaſts in carriages.

This is to be underſtood with reſpect to highways in general; what concerneth the number of horſes or beaſts in carriages upon *turnpike* roads in particular, is treated of hereafter in its place.

Penalty of having above five horſes in length.

1. No travelling waggon, wain, cart, or carriage, wherein any goods ſhall be carried (other than ſuch as are employed in or about huſbandry and manuring of lands, and in the carrying of hay,

hay, ſtraw, corn unthraſhed, coal, chalk, timber for ſhipping, materials for building, ſtones of all ſorts, ammunition or artillery for his majeſty's ſervice) ſhall travel in any highway, with above five horſes at length; on pain of 40 *s.* on conviction before one juſtice, on his view, or oath of one witneſs, by diſtreſs. 22 *C.* 2. *c.* 12. *ſ.* 7.

And every conſtable, or ſurveyor, wilfully ſuffering any waggons or carts to paſs thro' his limits, in other manner than by this act is allowed, ſhall forfeit in like manner 40 *s.* *id. ſ.* 1.

2. No travelling waggon, wain, cart, or carriage, wherein any goods ſhall be carried (other than ſuch as are employed about huſbandry and manuring of lands, and in the carrying of hay, ſtraw, corn unthraſhed, chalk, timber for ſhipping, materials for building, ſtones of all ſorts, ammunition or artillery for his majeſty's ſervice) ſhall go with above five horſes, oxen, or beaſts in length; on the like pains, and ſubject to the like proviſoes, as by the 6 *An. c.* 29. and 9 *An. c.* 18. hereafter following. 1 *G. c.* 11.

Penalty of having above five horſes or oxen in length.

3. No waggon (whether travelling for hire or not, 14 *G.* 2. *c.* 42. *ſ.* 6.) ſhall go or be drawn with more than ſix horſes, either in length, or in pairs, or ſideways; on pain that the owner or driver ſhall forfeit all his horſes above ſix, with all geers, bridles, halters, and accoutrements, to him who ſhall ſeize or diſtrain the ſame. And the perſon who ſhall make ſuch ſeizure or diſtreſs, ſhall deliver the ſame to the conſtable, or ſome pariſh officer, of the ſame or next adjacent pariſh where the ſeizure is made, till the perſon ſeizing ſhall make proof upon oath before ſome juſtice, of the offence committed; and the ſaid juſtice ſhall iſſue his precept to ſuch officer, immediately to deliver the ſame for the ſole uſe of the perſon ſeizing, paying ſuch reaſonable charge for keeping and ſecuring the ſame, as the juſtice ſhall direct. And if any perſon ſhall attempt to obſtruct the execution hereof, he ſhall on conviction by the oath of one witneſs before one juſtice, be committed to gaol for three months, and ſhall alſo forfeit 10 *l.* by warrant of ſuch juſtice by diſtreſs, and if not paid in three days, the diſtreſs to be ſold. 5 *G. c.* 12.

Penalty of having above ſix horſes in length, pairs, or ſideways.

But the ſtatute of the 27 *G.* 2. *c.* 20. allows a further time for keeping all ſuch diſtreſſes, *viz.* not leſs than four days, nor more than eight.

Or, before the goods are ſeized, oath may be made at any time within three days, before any juſtice where the offence was committed, or the offender ſhall happen to be; and the goods ſhall remain for three days after the offence liable to ſeizure and diſtreſs, for the uſe of the informer in like manner as if they had been ſeized in the fact. 14 *G.* 2. *c.* 42. *ſ.* 6.

Or (as hath been ſaid at the beginning of this title) an action of trover may be brought for the ſame, wherein if the plaintiff recovers, he ſhall have double coſts. 24 *G.* 2. *c.* 43. *ſ.* 11.

H. 16 *G.* 2. *K.* and *Thomas Sergiſon*, eſquire. An information was moved for againſt him, for not condemning a horſe taken out of a team under the ſtatute of the 5 *G. c.* 12. which requires proof to be made before a juſtice, of the cauſe of forfeiture; and

the party who ſeized tendring his own oath, the defendant ſcrupled to take it, or to determine the affair in the abſence of the owner or driver. And by the court, They were both reaſonable objections. Why is not the perſon who ſeized, and is to have the benefit of the forſeiture, within the reaſon of excluding informers where there is a penalty? *Making proof* muſt mean *legal proof*. The other alſo is but natural juſtice: There are exceptions in the act, as to one ſtone, or one piece of timber, though drawn by ever ſo many horſes; and ought not the owner to have an opportunity of ſhewing it? And the rule was diſcharged with coſts. *Str.* 1181.

Or above four horſes in carts.

And moreover, no cart (whether travelling for hire, or not for hire, 14 *G.* 2. *c.* 42. *ſ.* 6.) ſhall be driven with more than (four horſes, 16 *G.* 2. *c.* 29.); on pain that the owner or driver ſhall in like manner forfeit all the horſes above four, with the geers, bridles, halters, and accoutrements. 5 *G.* *c.* 12. *ſ.* 1.

But nothing in this ſection ſhall extend to ſuch waggons, wains, carts, or carriages, as ſhall be employed about huſbandry or manuring of land, and in the carrying of cheeſe, butter, hay, ſtraw, corn unthreſhed, coals, chalk, or any one tree or piece of timber, or any one ſtone, or block of marble, carravans, and the covered carriages of noblemen and gentlemen for their own private uſe, or ſuch timber, ammunition, or artillery as ſhall be for the ſervice of the king, his heirs, and ſucceſſors. 5 *G.* *c.* 12. *ſ.* 5.

Penalty of having above ſix horſes or oxen, in length, pairs, or ſideways.

4. By 6 *An.* *c.* 29. and 9 *An.* *c.* 18. No travelling waggon, wain, cart, or carriage, wherein any goods ſhall be carried (other than ſuch as are employed in and about huſhandry and manuring of land, and in the carrying of hay, ſtraw, (corn unthreſhed, 1 *G.* *c.* 11.) chalk, timber for ſhipping, materials for building, ſtones of all ſorts, or ammunition or artillery for the ſervice of his majeſty, his heirs, or ſucceſſors) ſhall travel or go in any highway, with above ſix horſes, oxen, or beaſts; on pain of 5 *l.* And any perſon may ſeize or diſtrain any or all the horſes, oxen, or beaſts of any perſon offending herein, and forthwith deliver them to the ſurveyor or other pariſh officer, and if the penalty is not paid in three days, ſuch officer ſhall by warrant of one juſtice ſell the ſame; rendering the overplus, charges firſt deducted.

And if any perſon employed by any carrier, drive or aſſiſt in driving ſuch unlawful number, he ſhall forfeit 5 *l.* in like manner.

And the ſurveyor wilfully ſuffering them to travel with more, ſhall alſo in like manner forfeit 5 *l.*

Exception of drawing up ſteep hills.

5. But nothing in any of the aforeſaid acts ſhall extend to reſtrain the owners of waggons or other carriages, or their ſervants, drawing with ſo many horſes or beaſts, up any ſuch ſteep hills, as the juſtices at the quarter ſeſſions ſhall from time to time order and direct; which order ſhall be kept by the clerk of the peace amongſt the records of the ſeſſions, to which all perſons at reaſonable times, ſhall have recourſe *gratis*. 24 *G.* 2. *c.* 43. *ſ.* 10.

Exception where the wheels are nine inches broad.

6. Alſo, it ſhall be lawful for any waggon or other four wheel carriage, having the fellies of the wheels nine inches broad, to

paſs

paſs on any highway, with any number of horſes and beaſts not exceeding eight; and for any cart or two wheel carriage, having the like wheels, with any number not exceeding five; without being ſubject to any penalties for cauſing them to be driven by a greater number. 26 *G.* 2. *c.* 30. *ſ.* 6.

XVII. Nuſance by unlawful breadth and tire of wheels.

Breadth of wheels.

1. No travelling waggon for hire (other than ſuch as are employed in huſbandry, and in carrying of cheeſe, butter, hay, ſtraw, corn unthreſhed, coals, chalk, or any one tree or piece of timber, or any one ſtone, or block of marble, carravans, and the covered carriages of noblemen and gentlemen for their own private uſe, or timber, ammunition, or artillery for the king's ſervice) having the wheels bound with ſtreaks or tire of a leſs breadth than two inches and an half when worn, or being faſtened on with roſeheaded nails, ſhall go or be drawn with more than three horſes, between *Sep.* 29. and *April* 15. yearly; on pain that every owner or driver thereof, ſhall forfeit all the horſes above three, with all geers, bridles, halters, and accoutrements; to be ſeized, diſtrained, or otherwiſe recovered, as the number of horſes above ſix in a waggon either in length, pairs, or ſideways, as is particularly ſpecified under the third ſection of the laſt preceding head. 5 *G.* *c.* 12. 14 *G.* 2. *c.* 42. *ſ.* 2, 6. 15 *G.* 2. *c.* 2. 24 *G.* 2. *c.* 43. *ſ.* 11.

[What belongeth to the breadth of wheels upon turnpike roads in ſpecial, is treated of under the article relating to turnpikes hereafter following.]

Wheels in London.

2. No perſon in *London* and *Weſtminſter*, or within 10 miles thereof (unleſs it be with broad wheels upon turnpike roads, 26 *G.* 2. *c.* 30. *ſ.* 5.) ſhall carry at any one load, in waggons or carts having their wheels ſhod with iron, more than 12 ſacks of meal of five buſhes each, nor more than 12 quarters of malt, nor more than 700 ½ of bricks, nor more than one chalder of coals; on pain of forfeiting any one of the horſes, with the geers, bridles, and halters therewith uſed, on conviction in three days before one juſtice. 6 *G.* *c.* 6. 5 *G.* *c.* 12. 14 *G.* 2. *c.* 42. *ſ.* 6.

And by the 18 *G.* 2. *c.* 33. The wheels of every cart, car, or dray within the bills of mortality, ſhall be ſix inches broad in the felley, and not wrought about with iron, nor be drawn with above the number of three horſes, after they are up the hills from the water-ſide; on pain of 40*s.* by warrant of one juſtice, by diſtreſs; and for want of diſtreſs, or non-payment in ſix days after demand, to be committed till paid: But this not to extend to any country cart or waggon, that ſhall bring any goods, or ſhall carry any goods half a mile beyond the paved ſtreets of the ſaid cities and places.

Alſo any perſon, within the ſaid limits, uſing any cart, car, or dray, having the wheels full ſix inches broad, when worn, may have the ſame bound round with tire of iron, provided it be ſix

inches broad, and made flat, and not set on with rose headed nails.

XVIII. Nusance by riding upon carriages, or the drivers otherwise misbehaving.

1. By the 1 *G. st.* 2. *c.* 57. If any person, driving any cart, dray, or waggon, in the streets of *London*, shall ride upon the same, not having some other person on foot to guide the same; he shall on conviction before the alderman of the ward, or justice of the peace, on oath of one witness, forfeit 10 *s.* by distress and sale; half to the informer, and half to the poor; and in default of payment, to be sent to the house of correction for three days. *s.* 8.

2. And by the 24 *G.* 2. *c.* 43. If any carter, drayman, carman, waggoner, or other driver shall ride upon the same in *London* or within ten miles thereof, not having some other person on foot to guide the same, he shall on the like conviction, forfeit 10 *s.* in case such driver shall not be the owner of such carriage; and in case he be the owner, then any sum not exceeding 20 *s.* To be recovered, levied, and applied, as by the aforesaid act of the 1 *G. st.* 2. *c.* 57. And any person, though not a peace officer, may stop and apprehend such offender, and carry him as soon as conveniently may be before a justice; and if any person shall resist, abuse, or prevent any person endeavouring to apprehend such offender, or when he is apprehended, shall rescue, or endeavour to rescue him, he shall forfeit 20 *s.* in like manner. *s.* 8, 9.

3. And, more generally, by the 27 *G.* 2. *c.* 16. If the driver of any cart, car, dray, or waggon, shall ride upon any such carriage, not having some other person on foot or on horseback to guide the same (such carts as are respectively drawn by one horse only, or by two horses abreast, and are conducted by some person holding the reins of such horse or horses, excepted); or if the driver of any carriage whatsoever, on any part of any street or highway, shall by negligence or wilful misbehaviour, cause any hurt or damage to any person passing or being thereon; Every such driver offending in any of the cases aforesaid, and being convicted thereof, by confession, or oath of one witness, before one justice, shall forfeit any sum not exceeding 10 *s.* or shall be committed to the house of correction, for any time not exceeding one month, at the discretion of such justice. And every such driver, offending in either of the said cases, may by authority of this act, and without any other warrant, be apprehended by any person who shall see the offence committed, and shall be immediately conveyed or delivered to a constable, or other peace officer, in order to be conveyed before a justice, to be dealt with according to law. *s.* 7.

Note; It is not said who shall have this penalty, so that it seemeth that the justice shall estreat the same into the exchequer: And here is no power given to levy the same by distress; but if the party

party ſhall not pay upon conviction, the juſtice (by the act) may commit him to the houſe of correction.

XIX. Pulling up blocks in the highway. Blocks.

Every perſon who ſhall pull up, cut down, or remove any poſt, block, great ſtone, bank of earth, or other ſecurity, made for ſecuring horſe and foot cauſways from waggons, wains, and carts; ſhall (on conviction before one juſtice of the place or diviſion, on view, or oath of one witneſs) forfeit 20 *s.* dy diſtreſs. 7 & 8 *W. c.* 29. *ſ.* 6.

XX. Concerning guide poſts. Guide poſts.

The juſtices, at the ſpecial ſeſſions, may direct their precept to the ſurveyors, in any place where two or more croſs highways meet, requiring them forthwith to cauſe to be erected or fixed, in the moſt convenient place where ſuch ways join, a ſtone or poſt, with an inſcription thereon in large letters, containing the name of the next market town, to which each of the ſaid joining highways leads; who ſhall be reimburſed in the ſame manner as before is mentioned concerning the providing of materials. And if the ſurveyor ſhall, by the ſpace of three months after ſuch precept to him delivered, neglect or refuſe to cauſe ſuch ſtone or poſt to be fixed; he ſhall forfeit 10 *s.* to be levied by warrant of one juſtice by the conſtable, by diſtreſs, who ſhall employ it towards ſuch ſtone or poſt; and if any thing remains, he ſhall employ it in repairing ſuch croſs ways. 8 & 9 *W. c.* 16. *ſ.* 7.

XXI. Breadth and widening of the highways. Breadth.

1. The ſurveyor ſhall make every cart way leading to any market town, eight foot wide at the leaſt. 3 *W. c.* 12. *ſ.* 15.

2. And no horſe cauſway ſhall be leſs than three foot broad. 3 *W. c.* 12. *ſ.* 21.

3. By the 8 & 9 *W. c.* 16. The juſtices, or the major part of them, being five at the leaſt, at the quarter ſeſſions, ſhall have power to inlarge or widen any highways, ſo that the ground to be taken into them do not exceed eight yards in breadth, and ſo that the ſaid power do not extend to pull down any houſe, or to take away the ground of any garden, orchard, court, or yard. *ſ.* 1.

In order whereunto, they ſhall iſſue their precepts to the owners of grounds, or others intereſted in the ſame, that are to be laid into the ſaid highways, to appear at the next quarter ſeſſions, to ſhew cauſe why the ſaid highways ſhould not be inlarged. *ſ.* 3.

And for the ſatisfaction of perſons who are intereſted in the ſaid ground, they are impowered to impanel a jury, and ſwear them, that they will aſſeſs ſuch damages to be given and recompence to be made to the owners and others intereſted in the ſaid ground rent or charge reſpectively, for their reſpective intereſts, as they ſhall think reaſonable, not exceeding 25 years purchaſe for lands

ſo

ſo laid out; and likewiſe ſuch recompence as they ſhall think reaſonable, for the making a new ditch and fence, to that ſide of the highway that ſhall be ſo enlarged, and alſo ſatisfaction to any perſon that may be otherwiſe injured by inlarging the ſaid highways. *ſ.* 1.

And they ſhall have power to order an aſſeſſment to be made upon all the inhabitants, owners, or occupiers of lands, houſes, tenements, or hereditaments, that ought to repair the ſame, in ſuch manner as the ſaid juſtices ſhall appoint. *ſ.* 1.

Provided, that no ſuch aſſeſſment in any one year, for inlarging highways, ſhall exceed 6 *d.* in the pound of the yearly income of any lands, houſes, tenements, and hereditaments, nor the rate of 6 *d.* in the pound for perſonal eſtates. *ſ.* 2.

And the ſaid aſſeſſment ſhall by order of the ſaid juſtices be levied by the ſurveyor, by diſtreſs, if not paid in ten days after demand. *ſ.* 1.

And the money thereby raiſed, ſhall be imployed and accounted for, according to the order of the ſaid juſtices, towards purchaſing the ſaid lands, and making the ſaid ditches and fences. *ſ.* 1.

And upon payment of the money ſo awarded, or leaving it in the hands of the clerk of the peace for the uſe of the owner, or others intereſted in the ſaid ground, the intereſt of the ſaid perſons in the ſaid ground rent or charge, ſhall be for ever diveſted out of them. *ſ.* 1.

And the ſaid ground ſhall be eſteemed a publick highway to all intents and purpoſes. *ſ.* 1.

Provided, that if any ſuch order ſhall be made by the ſaid juſtices for the laying out of ground for the enlarging of highways, the owners of the ground ſhall have free liberty, within 8 months after ſuch order, to cut down any wood or timber growing thereon; or upon the neglect thereof, the ſame ſhall be ſold by order of the juſtices, and the owners ſhall receive the full of what ſhall be made thereof, the charges of working the ſame being deducted. *ſ.* 4.

And any perſon aggrieved by the order of the juſtices, may appeal to the next aſſizes; and if the judge ſhall affirm the order, he may award coſts againſt the appellant, to be levied by diſtreſs. *ſ.* 5.

4. In order to prevent robberies, it is enacted by the 13 *Ed.* 1. *ſt.* 2. *c.* 5. That highways leading from one market town to another ſhall be enlarged, ſo that there be neither dyke, tree, nor buſh, within 200 foot on each ſide of the way. Except aſhes and great trees. And if by default of the lord that will not avoid the dyke, underwood, or buſhes, any robbery be done therein, the lord ſhall be anſwerable for the felony; and if murder be done, the lord ſhall make a fine at the king's pleaſure. And if the lord be not able to fell the underwoods, the country ſhall aid him. And if a park be taken from the highway, it is requiſite that the lord ſhall ſet his park 200 foot from the highways, or that he make ſuch a wall, dyke, or hedge, that offenders may not paſs nor return to do evil.

XXII. Lands

XXII. Lands given to repairing highways. Charities.

Where any lands have been, or ſhall be given for the maintenance of cauſeys, pavements, highways, and bridges, the truſtees ſhall let them to farm, at the moſt improved yearly value, without fine; and the juſtices in open ſeſſions ſhall inquire by ſuch ways and means as they think fitting, into the value of ſuch lands; and if the truſtees have been faulty, they may order the improvement and imployment of the profits thereof, according to the direction of the donor. (Except lands given for the ſaid uſes to colleges or halls, which have viſitors of their own.) 22 *C.* 2. *c.* 12. *ſ.* 2.

XXIII. Aſſeſſment for the repair of highways. Aſſeſſment.

Where the juſtices at the general or quarter ſeſſions, ſhall be fully ſatisfied, that the highways within any pariſh, townſhip, or place, cannot otherwiſe be ſufficiently repaired, an aſſeſſment upon all the inhabitants, owners, and occupiers of lands, tenements, and hereditaments, or any perſonal eſtate, uſually rateable to the poor, ſhall be made, levied, collected, and allowed by ſuch perſons, and in ſuch manner, as the ſaid juſtices by their order at ſuch ſeſſions ſhall appoint: And the money thereby raiſed, ſhall be employed and accounted for, according to the orders and directions of the ſaid juſtices, towards repairing and ſupporting the ſame: And the ſaid aſſeſſment ſhall be levied by diſtreſs and ſale of the goods of every perſon ſo aſſeſſed (not paying the ſame within ten days after demand). Provided, that no ſuch aſſeſſment in any one year, ſhall exceed 6*d.* in the pound of the yearly value of any lands, houſes, tenements, and hereditaments ſo aſſeſſed, nor the rate of 6*d.* for 20*l.* in perſonal eſtate. 3 *W.* *c.* 12. *ſ.* 17, 18.

And on application of the ſurveyor, the ſaid juſtices may, if they ſee fitting, cauſe ſuch aſſeſſment to be made, altho' the ſix days work hath not been performed; but the ſaid aſſeſſment ſhall not excuſe the ſix days labour. 1 *G.* *ſt.* 2. *c.* 52. *ſ.* 6.

T. 6 *G.* *K.* and the inhabitants of *Stroud.* An order for impoſing a rate towards the repairs of the highways, was quaſhed for two exceptions: 1. Becauſe it did not appear but that the ſtatute labour was ſufficient. And, 2. Becauſe only the *occupiers of land* are charged, whereas others are equally liable. *Str.* 315. In all ſuch caſes, it is beſt to purſue the ſtatute; and the order therefore in this caſe ſhould have ſet forth, not that *the ſtatute labour was inſufficient*, but that the court was *fully ſatisfied that the highways could not otherwiſe be ſufficiently repaired*; and they ſhould have ordered an aſſeſſment *upon all the inhabitants, owners, and occupiers of lands, tenements, and hereditaments, or any perſonal eſtate*, uſually rateable to the poor, within the pariſh or diſtrict.

XXIV. In

Parish contributory.

XXIV. In what case the whole parish shall be contributory.

If any innship, liberty, precinct, or vill, that was to repair its own highways, shall have levied 6*d.* in the pound, and employed the same in repairing, and yet the said highways are not sufficiently repaired, the justices at their special sessions may order the whole parish to contribute towards the repairing thereof. 7 & 8 *W. c.* 29. *s.* 4.

XXV. Further provision for the same, by the common law.

Where the statute provisions shall fall short, the common law to come in aid.

It is no excuse for the inhabitants of a parish, being indicted at common law, for not repairing the highways, that they have done all that is required of them by statute; for since these statutes are wholly in the affirmative, and made in aid of the common law, and to supply the defects thereof, they shall not be construed to abrogate any provision thereby made for these purposes. 1 *Haw.* 204. So that at all events, the parish may be compelled to make their ways good.

XXVI. Presentment or indictment (C) *of highways in general.*

Indictment to be within the county.

1. All defects of repairs of highways, shall be presented in the county where they lie, and not elsewhere. 22 *C.* 2. *c.* 12. *s.* 4.

Must shew it to be a highway.

2. And the indictment must shew, that the way is common to all the king's people; for which cause it hath been resolved, that an indictment for a nusance to a horseway, without adding that it is a highway, is naught. 1 *Haw.* 220.

Note; The expression for *the king's highway*, when the indictments were in *Latin*, was *alta via regia*; which a modern author, in his form of an indictment, translates *a royal highway*.

Must shew the places from and to which it leads.

3. It is safest in the indictment to shew both the place from which, and also the place to which the way supposed to be out of repair doth lead; yet exceptions for want of such certainty have sometimes been disallowed: however it seems certain, that there is no necessity to shew that a highway leads to a market town, because every highway leads from town to town. 1 *Haw.* 219.

Place where.

4. It is necessary in the indictment expresly to shew, in what place the nusance complained of was done; for which cause, an indictment for stopping a way at *D.* leading from *D.* to *C.* is not good, for it is impossible that a way leading from *D.* should be in *D.* and no other place is mentioned. 1 *Haw.* 219.

Need not name the inhabitants.

5. It is said, that a presentment that a highway in such a place is decayed, by the defaults of the inhabitants of such a town is good, without naming any person in certainty. 1 *Haw.* 220.

6. But

6. But it hath been adjudged, that an indictment against particular persons, must specially charge them every one. 1 *Haw.* 220. Indictment against particular persons.

7. It ought also certainly to shew, to what part of the highway the nusance did extend, as by shewing how many foot in breadth it contained; or otherwise the defendant will neither know of the certainty of the charge, against which he is to make his defence, neither will the court be able from the record to judge of the greatness of the offence, in order to assess a fine answerable thereunto; and it hath been resolved, that the place is not sufficiently ascertained by shewing, that it contained so many foot in length, and so many in breadth, *by estimation.* 1 *Haw.* 220. Must set forth how much is out of repair.

8. Also, the fact must be expressed in such proper terms, that it may clearly appear to the court to have been a nusance; and for this cause it hath been resolved, that a presentment for *diverting* a highway is not good, because a highway cannot be diverted, but must always continue in the same place where it was, howsoever it may be *obstructed*, and a new way made in another place. 1 *Haw.* 220. Must set forth the fact clearly.

9. It seems to be implied in the construction of all penal statutes, that no one ought to be convicted of any offence against them without having notice of the accusation made against him, and an opportunity of defending himself. And therefore it seems certain, that generally no one ought to be punished for any of the abovementioned offences, without being called upon to answer for himself, and having liberty to traverse the matters alledged against him. 1 *Haw.* 219. Persons indicted to have notice.

10. Upon an indictment against a parish for not repairing, they can give nothing in evidence upon the plea of not guilty, but that the way is in repair; but if it be against a particular person, he may give evidence that others ought to repair it. 3 *Salk.* 183. *Comb.* 396. Plea of not guilty.

11. And the defendants ought not to plead that they ought not to repair, without shewing who ought. 1 *Haw.* 220. Plea to charge others.

12. And Mr. *Hawkins* says, that if a particular person be bound to repair a highway, either by inclosure or by prescription, the parish cannot take advantage of it upon the plea of not guilty, but ought to set forth their discharge in a special plea. 1 *Haw.* 203. Special plea.

13. After conviction, or upon a demurrer, or confession, any one may take exceptions to such indictment or presentment in any court for the want of legal form; but the court in discretion will very rarely suffer a man to take such exceptions, before such conviction or confession, without a certificate and affidavit that the ways are in good repair. 1 *Haw.* 219. Exceptions to the form of the indictment.

14. And the defendants shall not be discharged by submitting to a fine, but a *distringas* shall go *in infinitum* till they repair. 1 *Haw.* 220. Fine no discharge.

XXVII. Presentment of a justice on his own view. Presentment on view.

By the 5 *El. c.* 13. Every justice of the peace shall have authority on his own proper knowledge, in the open general sessions, to

to make preſentment (D) of any highway not well and ſufficiently repaired, or of any other default contrary to the ſtatute of the 2 & 3 *P. & M.* And every ſuch preſentment made by a juſtice upon his own knowledge ſhall be as good, and of the ſame force, ſtrength, and effect in the law, as if the ſame had been preſented, found, and adjudged by the oath of 12 men: And for every ſuch default ſo preſented, the juſtices ſhall immediately at the ſaid general ſeſſions, have authority to aſſeſs ſuch fines as to them ſhall be thought meet: Saving every perſon that ſhall be touched by any ſuch preſentment, to have his lawful traverſe to the ſame preſentment, as they may have upon any indictment of treſpaſs or forcible entry. *ſ.* 9.

Hereupon it hath been obſerved by Mr. *Dalton* and others, that the juſtices at the ſaid ſeſſions may aſſeſs the fine upon ſuch offenders, and that in the abſence of the party, without calling him to anſwer by any proceſs: Which opinion ſeeming contrary to natural juſtice, and to the privilege of an *Engliſhman* as eſtabliſhed by the great charter, perhaps hath not been ſufficiently weighed by all the authors who have adopted it; and there ſeems to be the more ground for this ſuſpicion, in that moſt of them do quote Mr. *Crompton* for this opinion, one after another, in a wrong page; and in fact Mr. *Crompton* ſaith no ſuch thing, but rather ſeems to incline to the contrary opinion; his words are theſe,——A preſentment at the ſeſſions by a juſtice of the peace, upon his own knowledge, of ſuch a highway not repaired, is as a preſentment, of 12 men, upon which the juſtices may aſſeſs a fine, by 5 *El. c.* 13. and 3 *P. & M. c.* 8. but the party may have a traverſe to the preſentment by the ſaid ſtatute of 5 *El. Cromp.* 110.

And Mr. *Hawkins*, obſerving upon this opinion, ſaith thus: It hath been holden, in the expoſition of this clauſe, that the party againſt whom ſuch a preſentment ſhall be made, cannot take any traverſe to the want of repair of ſuch highway; but it is agreed, that he may plead that ſome other perſon ought to repair the ſame, and traverſe his own obligation to do it. Neither can I ſee upon what reaſon the former opinion is grounded, that he cannot traverſe the want of repair of ſuch highway; for ſince the ſtatute expreſly ſaves to every perſon who ſhall be touched by any ſuch preſentment, his lawful traverſe to the ſame, as he might have to an indictment of treſpaſs or forcible entry; and ſince it ſeems clear, that every defendant to any ſuch indictment (*viz.* of treſpaſs or forcible entry) may traverſe the whole matter alledged againſt him, why may he not as well have the ſame benefit in the preſent caſe? And tho' the record of a juſtice of the peace, acting by force of any ſtatute, as a judge be not traverſable, yet it ſeems hard by ſuch a general rule, to make any record not traverſable, which by the expreſs words of the ſtatute which authorizes the making of it is allowed to be traverſable. 1 *Haw.* 217.

To which may be added, that the ſtatute doth not ſay, that ſuch preſentment ſhall be of like force as if found by the oaths of both juries (that is to ſay, both of the grand and traverſe jury), but only that it ſhall be of the like force, as if it had been preſented,

ſented, found, and adjudged, by the oath of 12 men; which can only intend, that it ſhall be of equal force with the preſentment of a grand jury.

So that the ſenſe of the ſtatute perhaps may be no more than this; that if the party is preſent in court, and ſubmits to the preſentment, the juſtices may immediately aſſeſs a fine: but he may traverſe the preſentment if he will; and if upon the traverſe he ſhall be acquitted, then there can be no foundation for fining him. But if he is abſent, it is reaſonable that he be firſt ſummoned to anſwer for himſelf; and if he ſhall afterwards be convicted either by confeſſion, or by verdict, then will be the time to ſet the fine. Otherwiſe, the aſſeſſing of a fine, in this and the like caſes, ſeemeth to be premature; beginning where the court ſhould end; being in effect the giving of judgment before they have heard the parties; and it is poſſible the defendant may be acquitted, and then the fining of him is ridiculous.——Beſides, that the court cannot ſo well judge beforehand of the *quantum* of the fine, which ought to be proportioned according to the demerits of the offence; of which they can by no means judge, until the matter hath come before them in a legal courſe of proceeding.

XXVIII. Power of the leet to puniſh offences. Leet.

1. The ſteward of the leet hath power given him, to inquire by the oaths of the ſuitors, of offences againſt the aboveſaid ſtatutes of 2 & 3 *P. & M. c.* 8. and 18 *El. c.* 10. and to aſſeſs fines and amerciaments for the ſame.

2. And he who is preſented in a court leet, for any offence relating to the highways, can only traverſe it ſo far as it concerns his freehold; as by charging him with being bound to ſuch repairs in reſpect of the tenure of his lands; for which purpoſe he may remove it by *certiorari* into the king's bench, and there traverſe it. 1 *Haw.* 219.

XXIX. Fines and the diſpoſal thereof. Fines.

1. All the *penalties and forfeitures* by any ſtatute (as hath been obſerved in the preamble to this title) are veſted in the informer, by the 24 *G.* 2. *c.* 43. But the *fines* upon an *indictment or preſentment* ſeem to continue as before.

2. Concerning which it is enacted, by the 3 *W. c.* 12. that no fine ſhall be returned into the exchequer, but ſhall be levied and paid into the hands of the ſurveyors, to be applied towards the repair of the highways. *ſ.* 14.

3. And if any fine impoſed for not repairing, ſhall be levied on any one inhabitant, or more; ſuch inhabitant ſhall make complaint to the juſtices at the ſpecial ſeſſions, and the ſaid juſtices or any two of them may by warrant under their hands and ſeals cauſe a rate to be made for reimburſing him; which rate ſo made, and confirmed by two juſtices, ſhall be collected and levied by the ſurveyor, by diſtreſs; who ſhall within one month after confirming the rate pay the ſame to ſuch inhabitant. 3 *W. c.* 12. *ſ.* 14.

4. And

4. And if any fine ſhall be miſapplied by any perſon, he ſhall on conviction thereof at the ſpecial ſeſſions, by proof upon oath, forfeit 5 *l.* to the informer, by diſtreſs. 1 *G. ſt.* 2. *c.* 52. *ſ.* 5.

Account.

XXX. Surveyor's account.

The ſurveyor before he ſhall be diſcharged from his office, ſhall at ſome ſpecial ſeſſions give an account upon oath of all money that has come to his hands, which ought to be employed in amending of the highways, and how he hath diſpoſed thereof; and if any ſhall remain in his hands, he ſhall deliver the ſame to his ſucceſſor, and in caſe of failure, he ſhall forfeit double value of what ſhall be adjudged to be in his hands by the ſaid juſtices, to be levied by diſtreſs, by warrant of two juſtices of the diviſion, and in default thereof, of any neighbouring juſtices. 3 *W. c.* 12. *ſ.* 9.

For which account or oath no fee ſhall be taken. 1 *G. ſt.* 2. *c.* 52. *ſ.* 11.

Appeal.

XXXI. Appeal.

1. If any perſon is aggrieved with any aſſeſſment, or other act by the juſtices, done on the ſtatute of 3 *W. c.* 12. he may appeal to the ſeſſions, whoſe order therein ſhall bind all parties. *ſ.* 19.

2. And perſons aggrieved by any thing done on the act of 1 *G. ſt.* 2. *c.* 52. (except thoſe who ſhall neglect to ſcour their ditches, and carry away the earth taken out of them, or who ſhall not carry away ſtone, timber, ſtraw, or dung left in the highways, or who ſhall not remove any other annoyances by watercourſes) may appeal to the next ſeſſions, whoſe order ſhall conclude and bind all perſons. *ſ.* 12.

3. Other appeals, where the law admits of them, are annexed in the particular offences.

XXXII. Certiorari.

By the 22 *C.* 2. *c.* 12. it is provided, that no preſentment or indictment for the defect of repairs of highways, ſhall be removed by *certiorari* or otherwiſe, till after traverſe and judgment. *ſ.* 4.

And by the ſtatute of the 3 *W. c.* 12. No preſentment, indictment, or order made upon that act, ſhall be removed at all by *certiorari*, into any other court. *ſ.* 23.

But by the 5 *W. c.* 11. If the right or title to repair come in queſtion, a *certiorari* (upon affidavit made of the truth thereof) may be granted to remove the ſame into the king's bench; provided that the party proſecuting the *certiorari*, ſhall (before the allowance thereof) find two manucaptors who ſhall enter into recognizance of 20 *l.* before a juſtice of the peace, that he ſhall at his own coſts and charges procure the iſſue to be tried at the next aſſizes, as in the caſe of other *certioraries*. *ſ.* 6.

And it hath been reſolved, that if the quarter ſeſſions, under pretence of the juriſdiction given them by theſe ſtatutes, take upon them

them to do a thing manifestly exceeding their authority, as to make an order on surveyors to make up their accounts before a special sessions, their proceedings may be removed by *certiorari* into the king's bench, and there quashed; for the quarter sessions have no manner of power given them, to intermeddle originally with such accounts, but only by way of appeal. 1 *Haw.* 218.

And, *M.* 3 *G.* 2. *K.* and *Greenhaw.* A *certiorari*, for the like reason, was granted to remove an indictment for not doing the statute labour; for the statute hath appointed another method of proceeding against such offender, and not by indictment. *Str.* 849.

M. 6 *G.* 2. *K.* and *Eckersall.* An order was made on the 7 & 8 *W. c.* 29. for the parish at large to repair the highways, the 6 *d.* in the pound levied on the township not being sufficient. And a *certiorari* being moved for, it was objected, that the 3 *W. c.* 12. had taken it away. To which it was answered, that this is an order founded on a subsequent law. But by the court, They must both be taken together: the rate must be made in aid of the township, by virtue of the former law. So a *certiorari* was denied. *Str.* 944.

E. 4 *G.* 2. *K.* and the inhabitants of *Hamworth.* Upon motion to quash a *certiorari* to remove an indictment against the defendants at sessions, for not repairing a bridge; it was insisted, that by the 1 *An. c.* 18. the *certiorari* is taken away. To which it was answered, and resolved by the court, that this act extended only to bridges where the county is charged to repair; and that where a private person or parish is charged, and the right will come in question, the 5 *W. c.* 11. had allowed the granting a *certiorari.* And therefore they refused to quash. *Str.* 900.

E. 17 *G.* 2. *K.* and *Farewell.* The prosecutor of an indictment for a nusance in the highway, took out a *certiorari*; and the defendant moved to quash it, there being no affidavit made according to the 5 *W. c.* 11. nor any recognizance given according to former statutes concerning *certioraries.* But the court, on considering these acts, held, that they related only to *certioraries* applied for by defendants, and not to one for the king, as this was. And many precedents were shewed of *certioraries* for a prosecutor taken out in the manner this was. And the *certiorari* was allowed. *Str.* 1209.

XXXIII. Turnpikes.

After having first premised, that by the 28 *G.* 2. *c.* 17. it is provided, that every prosecutor or informer may sue for any forfeiture or penalty imposed by any act relating to turnpike roads, in the manner directed by such act, or in any of the courts at *Westminster* in manner following, *viz.* if it is a pecuniary penalty, by action of debt, in which it shall be sufficient to declare, that the defendant is indebted to the plaintiff in the sum of ——— being forfeited by an act intituled, *An act to amend an act made in the 26th year of the reign of his present majesty*, intituled, *An act for the amendment and preservation of*

the publick highways and turnpike roads of this kingdom; and for the more effectual execution of the laws relating thereto; and if it is a horse, beast, or other goods, by an action of trover, in which the value thereof shall be given in damages, without any proof of any seizure or demand: But only that there shall be one recovery for one offence *bona fide*; and no action by this act to be brought in the courts at *Westminster*, but in six months: *s.* 15, 16. It is judged proper under this head (which is at length become a little perplexed) to proceed in the following manner:

Qualification of turnpike trustees.

1. No person shall be qualified to act as a turnpike trustee, unless he shall be in his own right, or in right of his wife, in the actual possession or receipt of the rents and profits of lands of the clear yearly value of 40 *l.* or possessed of or intitled to personal estate alone, or real and personal estate together, to the value of 800 *l.* or shall be heir apparent of a person possessed of an estate in land of the clear yearly value of 80 *l.* and unless he shall (not being such heir apparent) before he acts as trustee, take and subscribe the oath following before two trustees, *viz. I* A. B. *do swear, that I truly and* bona fide *am in my own right, or in right of my wife, in the actual possession and enjoyment, or receipt of the rents and profits of lands, tenements, or hereditaments, of the clear yearly value of* 40 l. *or possessed of, or intitled to a personal estate alone, or real and personal estate together, to the value of* 800 l. *So help me god.* And if any person shall act contrary hereto, he shall forfeit 50 *l.* to him who shall sue. 28 *G.* 2. *c.* 17. *s.* 13.

Note; This is one general qualification for all turnpike trustees. By the several particular turnpike acts, other qualifications are usually appointed, all which shall stand, where the estate is limited above what is here directed; only this clause provides, that no turnpike trustee whatsoever shall have less estate than is here limited.

Alehousekeepers not to be turnpike officers.

2. No person keeping a victualling house, alehouse, or other house of publick entertainment, shall be capable of any place of trust or profit under turnpike trustees, or of farming the tolls. 26 *G.* 2. *c.* 30. *s.* 20.

Erecting a turnpike gate without lawful power.

3. If the trustees shall erect or continue any turnpike-gate, where they have no power so to do; the justices in sessions, on complaint thereof, may finally determine the same in a summary way, and order the sheriff to remove it. 5 *G.* 2. *c.* 33. *s.* 4. 8 *G.* 2. *c.* 20. *s.* 17.

Pulling down turnpike gates.

4. By the 8 *G.* 2. *c.* 20. If any person shall either by day or night, wilfully or maliciously pull down, cut down, pluck up, throw down, level, or otherwise destroy any turnpike gate, post, rail, wall, chain, bar, or other fence, belonging to any turnpike gate, or any other chain, bar, or fence set up to prevent passengers from passing by without paying toll, or any house erected for the use of any turnpike gate, or forcibly rescue any person in custody for any the said offences, he shall be guilty of felony without benefit of clergy. *s.* 1.

And the said offences may be tried in any adjacent county. *s.* 3.

And

And by the 5 *G.* 2. *c.* 33; which made the like offences felony and transportation, the charges of prosecution shall be paid out of the tolls.

But the attainder shall not work corruption of blood, nor forfeiture of lands or goods. 8 *G.* 2. *c.* 20. *s.* 4.

And if any person, guilty of any the said offences, and being out of prison, shall discover and cause to be apprehended, one or more persons who shall have committed any of the said felonies, so as he shall be convicted, he shall have a pardon. *s.* 5.

And the hundred shall answer damages, not exceeding 20 *l.* as in cases of robbery; to be sued for in the name of the clerk of the peace, without naming him; the said damages to be applied as the tolls are. *s.* 6, 8.

But if an offender is convicted in 12 months, the hundred shall not be liable, but if they have paid such damages, the same shall be repaid to them out of the tolls. *s.* 7.

Also no action for such damages shall be brought, unless information on oath be made thereof within six days, before a justice in or near the hundred. *s.* 9.

Nor unless the suit be commenced in six months. *s.* 10.

Misusing the collector of the tolls.

5. If any person shall assault or threaten the collector of the toll, or forcibly pass through without paying toll, or shall forcibly carry away or detain him so as he shall not be able to return to his duty for three days; he shall, on conviction (after summons) by oath of one witness, before two justices near the division, forfeit 5 *l.* by warrant of the said justices, by distress; for want of distress, to be committed by them to gaol for six months, unless he shall be sooner discharged by the quarter sessions; and for the second or third offence, he shall forfeit 10 *l.* in like manner, and for want of distress shall be imprisoned for a year, and before he is discharged shall give security at the general quarter sessions for his behaviour for seven years. 8 *G.* 2. *c.* 20. *s.* 11.

And the collector of the toll may seize and detain any person guilty of the offences before mentioned, and carry him before a justice without a warrant; who shall bind him over to appear at the next petty sessions for the division, or commit him till he finds security to appear. *s.* 12.

But persons aggrieved by any order of two justices as aforesaid, may appeal to the next general quarter sessions; and if the court shall think that reasonable time of notice was not given, they may adjourn the appeal to the next quarter sessions; and may award costs to either party. *s.* 15.

And no *certiorari* shall be granted to remove any thing on this act, out of the county, into any other court. *s.* 16.

And if an action is brought against any on this act, it shall be laid in the proper county; and the defendant, if he recovers, shall have treble costs. *s.* 18.

Breadth of the wheels on turnpike roads.

6. It shall not be lawful, for any waggon, wain, cart, or wheel carriage, to be drawn on any turnpike road, unless the fellies of the wheels be nine inches broad (except as hereafter excepted); on pain that the owner thereof shall forfeit 5 *l.* half to him who shall in-

form and ſue, and half to the truſtees for repairing the turnpike road: to be recovered in the courts at *Weſtminſter* with treble coſts; or before two juſtices where the offence ſhall be committed, who may on complaint in ten days, ſummon the party, and the witneſſes on either ſide; and if the party ſhall not appear on ſuch ſummons, then on oath of the fact committed they may iſſue their warrant for apprehending him within their juriſdiction; and upon his appearance or contempt (on proof of notice given) they may proceed; and if he ſhall be convicted, either by view of the juſtices or any of them, or on ſuch information, or confeſſion, they may iſſue their warrants to levy the penalty with coſts of proſecution, by diſtreſs, and if not redeemed in five days, by ſale; and where goods of the offender cannot be found, may commit him to priſon for three months, or till payment. Perſons aggrieved may appeal to the next general ſeſſions, giving 14 days notice; and in five days after ſuch notice, entring into recognizance with two ſureties before one juſtice, to try the appeal: and the ſeſſions may mitigate the penalty; and may give coſts, and by their order or warrant cauſe the coſts to be levied by diſtreſs of the goods of the party appealing, and for want of ſufficient diſtreſs may commit him to the common gaol, not exceeding two months, or till payment of ſuch coſts; and if the party ſhall live in another diſtrict, any juſtice there, on a copy of the order proved upon oath, may by his warrant cauſe the ſame to be levied by diſtreſs, and if no ſufficient diſtreſs can be had, ſhall commit him to the common gaol not exceeding two months, or till payment. 26 *G.* 2. *c.* 30. *ſ.* 1, 16, 17.

Or otherwiſe ſuch owner ſhall forfeit any one of the horſes or beaſts, not being the thill horſe, together with the accoutrements, to the ſole uſe of him who ſhall ſeize or diſtrain the ſame. And the perſon ſeizing ſhall deliver ſuch diſtreſs to the conſtable or ſome other pariſh officer in or near the place where the ſeizure ſhall be; who ſhall receive and keep the ſame, till the perſon ſeizing ſhall make proof on oath before a juſtice of the offence; which juſtice ſhall thereupon iſſue his precept to ſuch conſtable or pariſh officer immediately to deliver the ſame to the ſeizor, to and for his own uſe and benefit, paying ſuch reaſonable charges for keeping and ſecuring the ſame, as the juſtice ſhall direct; but if no ſuch proof be made in three days, the diſtreſs ſhall be returned to the owner, he paying reaſonable charges for the keeping and ſecuring the ſame. And if any perſon ſhall attempt to obſtruct the diſtraining thereof, he ſhall forfeit 10 *l.* to be recovered and diſpoſed as above. *ſ.* 2, 13.

And if any perſon ſhall *drive* with wheels of leſs gage, or with more than the number of eight horſes in four wheel carriages, or more than five in two wheel carriages (except ſuch as are carrying one piece of timber, or one ſtone, or block of marble); the conſtable, or ſurveyor of the highways, or any other inhabitant of the pariſh or place where the offence ſhall be committed, and the ſurveyor of the turnpike, or any perſon appointed by five truſtees, may apprehend and take ſuch driver before a juſtice; and on conviction by confeſſion, or oath of one witneſs, he ſhall forfeit 5 *l.*

and if he have no goods whereon immediate diſtreſs may be had, the juſtice may commit him to the houſe of correction for one month, or till paid. *ſ.* 14.

By the wheel being nine inches broad is to be underſtood, that the ſole or bottom of the fellies ſhall be nine inches broad, from ſide to ſide, at the leaſt, and flat and even from ſide to ſide, as near may be. 28 *G.* 2. *c.* 17. *ſ.* 5.

And any two turnpike truſtees, by writing under their hands, may order the fellies to be meaſured at the turnpike gate; and if any perſon ſhall attempt to obſtruct the meaſuring thereof, he ſhall forfeit 10 *l.* in like manner. 26 *G.* 2. *c.* 30. *ſ.* 11, 13.

But if it ſhall appear that the fellies when firſt made were of nine inches, and are narrowed by wearing, no penalty ſhall be incurred if they meaſure full eight inches. *ſ.* 12.

And the truſtees, or five of them, ſhall from time to time, cauſe turnpike roads to be levelled, and put in condition for the uſe of travellers and carriages. 28 *G.* 2. *c.* 17. *ſ.* 6.

And no greater toll on turnpike roads ſhall be demanded for carriages having wheels nine inches broad, than is required by the reſpective turnpike acts to be paid for waggons or other four wheel carriages, drawn by five or four horſes or beaſts. 26 *G.* 2. *c.* 30. *ſ.* 7.

Moreover by the 28 *G.* 2. *c.* 17. For three years from *June* 24. 1755. but no longer, all waggons, wains, carts, and carriages, for all goods and merchandize, loaden or unloaden, having the fellies nine inches broad, may paſs through any turnpike gate without paying toll. *ſ.* 1.

And alſo the horſes drawing the ſame ſhall for the ſaid three years be exempted from tolls, as the carriages are. *ſ.* 10.

But this ſhall not extend to any chaiſe marine, coach, landau, berlin, chaiſe, or calaſh; nor to any waggon drawn by leſs than five horſes or beaſts: nor wain, cart, or other two wheel carriages, drawn by leſs than four. 26 *G.* 2. *c.* 30. *ſ.* 3.

But by the 28 *G.* 2. *c.* 17. All waggons, wains, *or other four wheel carriages*, not being common ſtage waggons or carriages (though the fellies are not of nine inches or ſix inches) may paſs on any turnpike road, with any number of horſes or beaſts of draught not exceeding five horſes or beaſts of draught; and if any owner or driver ſhall travel with more, ſuch owner ſhall forfeit 5 *l.* by diſtreſs, by warrant of three truſtees or one juſtice in or near the place where the offence ſhall be committed; and if any *driver* ſhall offend herein, ſuch juſtice ſhall commit him to the houſe of correction for one month. *ſ.* 8.

But by a ſubſequent clauſe in the ſame ſtatute, any waggon, wain, or other four wheel carriage, not having the fellies nine inches broad, may paſs on any turnpike road, provided it be not drawn by more than ſix oxen or neat cattle in pairs, and two horſes; or eight oxen in pairs, with one horſe; And any cart or other two wheel carriage, not having the fellies of the breadth aforeſaid, may paſs, provided it be not drawn by more than ſix oxen or neat cattle in pairs, and one horſe; or four oxen in pairs, and two horſes. *ſ.* 9.

Alſo by the ſaid act of the 28 *G.* 2. *c.* 17. All waggons having the fellies ſix inches broad, may paſs through any turnpike gate, with ſix horſes; and all carts and other carriages having the fellies ſix inches broad, with four horſes; without paying more toll, than is paid for waggons now drawn by four, and carts drawn by three horſes, or for the horſes drawing the ſame. *ſ.* 2.

Note; By the general clauſe abovementioned, in the ſtatute of the 28 *G.* 2. *c.* 17. *ſ.* 8. which enacteth, that if any owner or driver ſhall travel with more than five horſes, in any waggon, wain, *or other four wheel carriage*, with fellies leſs than nine or ſix inches broad reſpectively, he ſhall be liable to a penalty; it ſeemeth that a coach or other like carriage with ſix horſes cannot paſs, without incurring ſuch penalty: In former acts, there is a clauſe of exemption for coaches, landaus, berlins, chaiſes, and ſuch like, which by miſtake ſeemeth to have been omitted out of this act.

And to prevent the tolls from being diminiſhed by the exemption of nine inch wheels, it is enacted, that for three years from *June* 24. 1755. and no longer, the turnpike truſtees, or five of them, may cauſe to be taken and additional toll, if they ſhall find the ſame neceſſary on conſidering the ſtate of their reſpective tolls, not exceeding one fourth part more than the tolls payable by the reſpective acts, for every coach, caravan, chaiſe marine, landau, berlin, chariot, chaiſe, chair, and calaſh, and for all waggons, wains, carts, and other carriages, not having the fellies nine inches or ſix inches broad reſpectively. 28 *G.* 2. *c.* 17. *ſ.* 3.

And that the ſaid leſſening of the tolls may not be prejudicial to perſons who have lent money on the tolls; every turnpike act made this ſeſſion of parliament or before, ſhall continue for five years from its expiration. *ſ.* 4.

And where the toll on horſes or other beaſts drawing or paſſing through any turnpike gate, doth not amount to more than $\frac{1}{2}$ *d.* for every horſe drawing any wheel carriage, not having the fellies of nine inches or ſix inches, or to more than 1 *d.* for two horſes, or to more than 1 $\frac{1}{2}$ *d.* for three horſes drawing ſuch carriage; the truſtees, or five of them, may if they find it neceſſary on conſidering the ſtate of their tolls, collect double the former tolls in caſe they do not exceed $\frac{1}{2}$ *d.* and 1 $\frac{1}{2}$ *d.* in caſe they do not exceed 1 *d.* and 2 *d.* in caſe they do not exceed 1 $\frac{1}{2}$ *d*; and may collect the additional toll directed to be taken by this act, in caſes where the preſent toll amounts to 2 *d.* or more upon the horſes drawing any carriage, in ſuch manner as if ſuch toll were laid upon the carriage; any thing in this or in any former act notwithſtanding. *ſ.* 11.

Weighing engines, with the additional toll for over weight.

7. The turnpike truſtees, or any five of them, *may* cauſe to be erected (on any part of the turnpike road, 21 *G.* 2. *c.* 28. *ſ.* 1.) a crane, machine, or engine, for the weighing of carts, waggons, or other carriages, for the conveying of goods; and by writing ſigned by them, may order ſuch carriages which paſs through ſuch gate (except as hereafter excepted) to be weighed with their loading; and impower any perſon to take, over and above the other

toll,

toll, 20 *s.* for every hundred weight above 60, to be levied as the other tolls. 14 *G.* 2. *c.* 42. *ſ.* 1, 3.

And if it is within 30 miles of *London*, and the tolls amount to 150 *l.* a year, they *ſhall* in ſome convenient place, cauſe ſuch crane or engine to be erected. 24 *G.* 2. *c.* 43. *ſ.* 6, 7.

But this ſhall not extend to carts, waggons, or other carriages, employed only about huſbandry, or carrying of only cheeſe, butter, hay, ſtraw, corn unthreſhed, or chalk, or any one ſtone, block of marble, or piece of timber, nor to caravans, or the covered carriages of noblemen and gentlemen for their private uſe, or ſuch timber, ammunition, or artillery, as ſhall be for his majeſty's ſervice. 14 *G.* 2. *c.* 42. *ſ.* 5.

Alſo it ſhall notwithſtanding, be lawful for any carriage loaden with or carrying one tree or piece of timber, or one ſtone, or block of marble only, having the fellies of the wheels nine inches broad, to paſs on any turnpike road, with any number of horſes or beaſts; and for any waggon, or other four wheel carriage, having the fellies nine inches broad, to paſs on any turnpike road, with any number of horſes or beaſts, not exceeding eight; and for any cart or other two wheel carriage, having the fellies nine inches broad, with any number not exceeding five; without being liable to be weighed, or to pay the additional toll of 20 *s.* 26 *G.* 2. *c.* 30. *ſ.* 4.

And by the aforeſaid clauſe of the 28 *G.* 2. abovementioned, All waggons, wains, carts, and carriages, for all goods and merchandize, loaden or unloaden, having the fellies nine inches broad, may for the ſpace of three years from *June* 24. 1755. paſs through any turnpike gate without paying any tolls at all. *ſ.* 1.

And if any collector of the tolls, at any gate where or near to which any engine for weighing of carriages ſhall be erected, ſhall ſuffer any cart, waggon, or carriage aforeſaid, not having the fellies nine inches broad to paſs without weighing; he ſhall, on conviction before three truſtees, or one juſtice, on the oath of one witneſs, be committed to the houſe of correction to hard labour for one month. 28 *G.* 2. *c.* 17. *ſ.* 7.

And if any perſon ſhall hinder, or attempt to hinder, the weighing, or ſeizing any diſtreſs for ſuch additional toll, or ſhall reſcue the ſame, or uſe any violence to any perſon concerned in ſuch weighing or ſeizure; he ſhall, on oath of one witneſs, before one juſtice where the offence ſhall he committed, or the offender ſhall dwell, be committed to gaol for three months, and forfeit 10 *l.* by diſtreſs; and if not paid in three days, to be ſold. 14 *G.* 2. *c.* 42. *ſ.* 4.

Unloading goods to avoid the toll

8. If any perſon ſhall unload any goods, before the ſame ſhall come to the weighing engine, in order to avoid paying the 20 *s.* or ſhall after it has paſſed the engine, load thereon any goods taken from any horſe or other carriage belonging to ſuch waggoner, he ſhall forfeit 20 *l.* in like manner. 21 *G.* 2. *c.* 28. *ſ.* 2.

And more generally, by the 28 *G.* 2. *c.* 17. If any perſon ſhall unload any goods from any carriage before they come to the turnpike gate, in order to avoid payment of the toll; ſuch perſon, be-

ing the *owner*, on conviction before three truſtees or one juſtice, on the oath of one witneſs, ſhall forfeit 5*l.*; if not forthwith paid, to be levied by diſtreſs, rendring the overplus on demand, after deducting the reaſonable charges of making the diſtreſs and ſale, to be ſettled by ſuch truſtees or juſtice: and every *driver* offending, ſhall on like conviction be committed to the houſe of correction for one month. *ſ.* 7.

Waggon turned out of the road to avoid the tolls.

9. And no waggon, or other carriage, travelling for hire, upon any turnpike road, ſhall be turned out of the ſame, into any of the roads adjacent not being turnpike, in order to avoid, and thereby avoiding paying the tolls; on pain of forfeiting any one of the horſes drawing (not being the thill or ſhaft horſe) with all his geers and accoutrements, to the ſole benefit of any perſon who ſhall ſeize the ſame; and the perſon making ſuch diſtreſs, ſhall proceed in like manner, and be intitled to the like remedies, as is before directed in caſes of ſeizures of horſes, by the ſtatute of the 5 *G.* *c.* 12. 24 *G.* 2. *c.* 43. *ſ.* 4.

What inſcription ſhall be on the waggon.

10. If any owner of any waggon, wain, or cart, travelling for hire, ſhall drive or cauſe the ſame to be driven, on any turnpike road, not having his chriſtian and ſurname and place of abode, in large letters on the tilt or other conſpicuous part of ſuch waggon; he ſhall forfeit as for having the fellies under nine inches broad: and if he ſhall have any fictitious name thereon, he ſhall forfeit 50*l.* to be recovered in the courts at *Weſtminſter*, or before two juſtices as is aforeſaid. 26 *G.* 2. *c.* 30. *ſ.* 15.

And moreover, every owner of a common ſtage waggon or cart, having the fellies under nine inches or ſix inches, ſhall over and above cauſe to be painted on the tilt of ſuch as hath a tilt, otherwiſe on the moſt conſpicuous part, the following words in large and legible characters [COMMON STAGE WAGGON or CART] on pain of forfeiting one of the horſes or beaſts (not being the ſhaft or thill horſe) with the accoutrements, to him who ſhall ſeize the ſame; the ſeizor to have like remedy as before is ſpecified in the caſe of drawing with wheels under nine inches broad, by the 26 *G.* 2. *c.* 30. *ſ.* 2, 13. 28 *G.* 2. *c.* 17. *ſ.* 14.

Proſecution how to be ordered for offences againſt turnpike laws.

11. The turnpike truſtees, or five of them, ſhall appoint perſons to carry on proſecutions, for offences againſt any acts relating to turnpike roads; and charge the ſurveyors to be diligent in inquiring after ſuch offences: and all turnpike officers ſhall (on pain of removal and diſability) as often as any offence ſhall come to their knowledge, give immediate notice to a truſtee, who ſhall forthwith procure a meeting of the truſtees or five of them, who ſhall give immediate directions for the proſecution. 26 *G.* 2. *c.* 30. *ſ.* 18, 19.

Provided, that they ſhall not be obliged to proſecute, unleſs on confeſſion of the offender, or unleſs one witneſs can be produced to prove the offence. *ſ.* 22.

And the truſtees, or five of them, ſhall out of the tolls pay to the proſecutor, ſo much as the coſts allowed by law ſhall fall ſhort of reimburſing him his reaſonable expences. *ſ.* 21.

And

And every turnpike ſurveyor and toll gatherer, and all ſuch perſons employed by the truſtees as receive ſalaries, who ſhall wilfully neglect to ſeize any ſupernumerary horſe drawing contrary to the acts of the 26 *G.* 2. *c.* 30. and 28 *G.* 2. *c.* 17. and to lay ſuch information upon oath before a juſtice, or before the truſtees at their meetings, as by the ſaid act of the 26 *G.* 2. is directed,—ſhall upon information on oath before one juſtice, forfeit 10 *l.* half to the informer, and half to repairing the roads as the truſtees ſhall think fit. 28 *G.* 2. *c.* 17. *ſ.* 17.

And to prevent fraudulent ſeizures to evade the penalties, it ſhall be lawful for all courts, and every juſtice of the peace before whom any proceeding ſhall be, for any penalty or forfeiture inflicted by any act for repairing turnpike roads, or any way concerning the ſame, and they are required, where any prior ſeizure, action, information, or conviction ſhall be ſet up by way of defence,—to examine into the real merits thereof; and if it ſhall appear that the ſame was not done to recover ſuch penalty or forfeiture for the real purpoſes for which they were enacted, but to favour the offender, ſuch prior proceeding ſhall be deemed fraudulent and void; and ſuch court or juſtice ſhall proceed as if no ſuch prior proceeding had been. 28 *G.* 2. *c.* 17. *ſ.* 12.

Conſtable to execute the warrants of the truſtees.

12. The conſtable ſhall execute all warrants on the act of the 8 *G.* 2. *c.* 20. abovementioned, and on any former act concerning turnpikes; on pain of 5 *l.* to be levied by diſtreſs, by warrant of two juſtices directed to the high conſtable, in like manner as the penalties for aſſaulting the collector of the toll. 8 *G.* 2. *c.* 20. *ſ.* 13.

HAVING thus gone through the great number of laws relating to the highways, I ſhall add one obſervation upon the whole, which is this;——Notwithſtanding that the wiſdom of the nation hath been employed for above 200 years in redreſſing the great evil of bad roads, yet excepting in ſome caſes where turnpikes have been erected, the roads are as bad now, as they were in the days of *Philip* and *Mary*. And the defect is in many places, not ſo much the want of hands, as of proper direction. The ſame multitudes which will aſſemble to demoliſh a turnpike, at the hazard of their liberty and lives, are able, and (I doubt not) would be willing, if rightly inſtructed, to make the roads good, without paying turnpike tolls. But the misfortune is this; altho' the laws have provided that the ſurveyors ſhall be choſen out of the more ſubſtantial inhabitants, yet when that is done, ſcarce one of them in 500 knows how to make a good road, and if he does, his power continues in effect but for ſix days; and his ſucceſſor probably hath other ſchemes and notions, and the road is made never the better. Hence it is, that when the people aſſemble to repair the highways (if indeed they do aſſemble), they ſpend the time in diverſions, and making bargains, and other idle amuſements. And why ſhould they not? They may as well meet and do nothing, as work hard, and to no purpoſe. And from ſo many years experience, the caſe will never be otherwiſe, unleſs

the

the juſtices of the peace, or others (in like manner as the turnpike truſtees), ſhall have power given to them by act of parliament, to appoint general ſurveyors, within proper diſtricts, with ſalaries, to lay out the roads, and attend and direct the work, and ſee the ſtatute labour well performed. And this may be effected without any new aſſeſſment or charge; half the preſent aſſeſſment of 6*d.* in the pound, or even leſs than half, would be ſufficient in many places both to find ſalaries, and to widen and purchaſe roads where needful. And the people, when they ſhould find the benefit of their labour, would work with chearfulneſs.

There is another defect, eſpecially in the northern counties, in proportioning the number of men and carriages. The law requires no perſons to find carts or carriages (as hath been ſaid) but thoſe who have 50*l.* a year, or who keep a draught or plough: All others (having above 40*s.* a year) are to find two men, but no cart or carriage. Now in many places, the people who occupy 50*l.* a year, or who keep a draught or plough are very few in compariſon of thoſe who keep a ſingle horſe and cart, and have not perhaps two able men in the family: In which caſe, it would be more eligible and uſeful, for ſuch families to find one man with the horſe and cart, than two men without the ſame.

A. Warrant for the returning new ſurveyors; on 3 *W.* *c.* 12. *ſ.* 3, 9.

Weſtmorland. { To *Edward Cooke*, gentleman, high conſtable of *Lonſdale* ward within the ſaid county.

BY *virtue of the ſtatute in that behalf made, You are hereby required forthwith to iſſue your warrants to all the petty conſtables within your ſaid ward, in the form or to the effect following; that is to ſay:*

Weſtmorland Lonſdale Ward. { To the conſtable of ———.

BY *virtue of a precept from his majeſty's juſtices of the peace, acting in and for the ſaid Ward, within the ſaid county, at their ſpecial ſeſſions for the highways within the ſaid Ward aſſembled, you are hereby required to give due notice to the churchwardens, ſurveyors of the highways, and other inhabitants, within your pariſh, that they do aſſemble together with you the ſaid conſtable, on the 26th day of* December *next, and make a liſt of the names of a competent number of the inhabitants within your ſaid pariſh, who have an eſtate in lands, tenements, or hereditaments, in their own right or of their wives, of the yearly value of* 10l. *or a perſonal eſtate of the value of* 100l. *or are occupiers or tenants of houſes, lands, tenements, or hereditaments of the yearly value of* 30l. *if any ſuch there be, or if there be no ſuch perſons in your ſaid pariſh, then the ſaid liſt to be of the moſt ſufficient inhabitants within*

your

your ſaid pariſh: With which ſaid liſt you are perſonally to appear before the ſaid juſtices at their ſpecial ſeſſions to be holden at ——— *within the ſaid Ward in the county aforeſaid, on the* ——— *day of* ——— *now next enſuing, at the hour of* ——— *in the forenoon of the ſame day; that out of the ſaid liſt the ſaid juſtices then and there may nominate and appoint ſuch perſons to be ſurveyors of the highways within your ſaid pariſh for the year then next enſuing, as they the ſaid juſtices ſhall think fit and approve of.* [*And you are likewiſe to give notice to the preſent ſurveyors, that they do appear at the ſame time and place, and give an account upon oath before the ſaid juſtices, of all money that hath come to their hands, which ought to be employed in amending of the highways, and how they have diſpoſed of the ſame.*] *Given under my hand at* Hall Beck *in the ſaid county, the* ——— *day of* ———.

Edward Cooke,
High Conſtable.

And this you the ſaid high conſtable are in no wiſe to omit, on the peril that ſhall enſue thereof: Given under our hands and ſeals at our ſpecial ſeſſions at ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

B. Appointment of the ſurveyor.

Weſtmorland Lonſdale Ward. { At a ſpecial ſeſſions of the peace for the ſaid Ward, held at ——— in the ſaid Ward, within the county aforeſaid, the ——— day of ——— in the ——— year of the reign of ——— by and before ——— eſquires, juſtices aſſigned to keep the peace of our ſaid lord the king in the ſaid county:

WE *the ſaid juſtices do hereby nominate and appoint* A. S. *of* ——— *in the pariſh of* ——— *in the county aforeſaid, yeoman, to be ſurveyor of the highways within the ſaid pariſh* [or, *within the townſhip of* ——— *within the ſaid pariſh*] *for one whole year next enſuing the date hereof, and until he ſhall have given an account of his receipts and diſburſements and other matters relating to his ſaid office, according to law. Given under our hands and ſeals the day and year firſt abovewritten.*

C. Indictment for not repairing a common highway.

THE *jurors for our lord the king upon their oath preſent, that from the time whereof the memory of man is not to the contrary, there was, and yet is a common and ancient king's highway, leading from the town of* ——— *in the county of* ——— *towards and unto the market town of* ——— *in the county of* ———, *uſed for*

for all the liege subjects of our said lord the king, and of his predecessors, with their horses, coaches, carts, and carriages, to go, return, pass, ride, and labour at their will and pleasure; and that a certain part of the same king's common highway, called ——— situate, lying, and being in the parish of ——— in the county of ——— aforesaid, containing in length ——— feet, and in breadth ——— feet, on the ——— day of ——— in the ——— year of the reign of ——— and continually afterwards, until the day of the taking of this inquisition, was and yet is in great decay, for the want of due reparation and amendment of the same, so that the subjects of our said lord the king, passing and travelling thro' the same, with their horses, coaches, carts, and carriages, could not during the time aforesaid, nor yet can, go, return, pass, ride, and labour, without great danger; to the great damage and common nusance of all the liege subjects of our said lord the king, passing thro' that way, and against the peace of our said lord the king, his crown, and dignity: And that A. O. *of ——— aforesaid, gentleman, ought by reason of the tenure of his lands and tenements, situate, lying, and being at ——— aforesaid, in the county aforesaid, to repair and amend the said highway, when and so often as it shall be necessary.*

Or, *that the inhabitants of the said parish of ——— in the said county of ——— the common highway aforesaid (so as aforesaid being in decay) ought to repair and amend, when and so often as it shall be necessary.*

Indictment for not repairing an ancient horse and foot way.

THE *jurors for our lord the king upon their oath present, that from the time, of which the memory of man is not to the contrary, there was, and yet is, a certain common and ancient highway, leading from ——— in the county of ——— to ——— in the county of ——— for all the liege subjects of our now lord the king, and his ancestors, on horseback and on foot, to go, return, pass, ride, labour, and drive their cattle at their will, and that a certain part of the same common highway, situate, lying, and being within the parish of ——— in the county of ——— aforesaid, containing in length ——— feet, and in breadth ——— feet, on the ——— day of ——— in the ——— year of the reign of ——— and continually afterwards, until the day of the taking of this inquisition, at the parish of ——— aforesaid, in the county aforesaid, was, and yet is, very ruinous, miry, deep, broken, and in such decay, for want of due reparation and amendment of the same, that the liege subjects of our said lord the king, by and thro' the same way, with their horses and cattle, could not during the time aforesaid, nor yet can go, return, pass, ride, and labour, as they ought and were wont to do, without great danger of themselves and of their goods, to the great damage and common nusance of all the liege subjects of our said lord the king, through the same highway*

going,

going, returning, passing, riding, and labouring, and against the peace of our said lord the king. And that the inhabitants of the same parish of ——— in the county aforesaid, the same common highway, so as aforesaid being in decay, ought to repair and amend, when, and so often as it shall be necessary.

Indictment for incroaching upon a highway, by building thereupon.

Westmorland. THE *jurors for our lord the king upon their oath present, that one* A. O. *late of ——— carpenter, the ——— day of ——— in the ——— year ——— with force and arms, at ——— in and upon a common highway, in a certain place commonly called ——— there leading from ——— to ——— by a certain building there, containing in length ——— feet, and in breadth ——— feet, by him the said* A. O. *erected and built, hath unlawfully and unjustly incroached, and doth yet incroach, and the building aforesaid so as is aforesaid erected and built by him the said* A. O. *from the aforesaid ——— day of ——— in the year aforesaid, unto the day of exhibiting this information, at ——— aforesaid in the county aforesaid, with force and arms, unlawfully and unjustly hath continued and doth yet continue, by reason whereof the common highway aforesaid hath become and is greatly straitned, so that the lieges and subjects of the said lord the king upon and thro' the same common highway aforesaid, with their horses, carts, and carriages cannot go, pass, ride, and labour as they ought and were wont to do, to the great and common nuisance of all the lieges and subjects of the said lord the king in and through the said common highway going, passing, riding, and labouring, and against the peace of the said lord the king.* Trem. 196.

Indictment for inclosing the highway.

Westmorland. THE *jurors of our lord the king upon their oath present, That whereas from the time whereof the memory of man is not to the contrary, it was used, that the liege subjects of our said lord the king had and lawfully used a certain common highway at ——— in the said county, in a certain place there called ——— leading from the town of ——— aforesaid, to the town of ——— for themselves and their goods, without any stoppage or hindrance by any ditches, hedges, or other obstacles whatsoever; nevertheless one* A. O. *of ——— aforesaid, in the county of ——— aforesaid, yeoman, on the ——— day of ——— in the ——— year of the reign of ——— with force and arms, at ——— aforesaid, in the county of ——— aforesaid, in the place aforesaid called ——— upon the common highway aforesaid, a certain ditch and quickset hedge did cast up, set, and erect, and the said ditch and quickset hedge so as is aforesaid cast up, set,*

and

and erected, doth yet continue and keep; to the great ſtoppage and hindrance of the liege ſubjects of our ſaid lord the king, paſſing in and thro' the ſaid common highway, and againſt the peace of our ſaid lord the king.

Indictment for laying timber or other obſtructions in the highway.

THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *and on divers other days and times, as well before as afterwards, with force and arms, at* ——— *in the ſaid county, in and upon the king's common highway there, leading from* ——— *unto the town of* ——— *divers great pieces of timber put and placed and cauſed to be put and placed, and the ſame great pieces of timber ſo as aforeſaid put and placed, from the aforeſaid* ——— *day of* ——— *in the* ——— *year aforeſaid, until the day of exhibiting this information, in and upon the king's common highway aforeſaid, to be, lie, and remain, hath permitted, and doth ſtill permit, to the grievous and common nuſance of all the lieges and ſubjects of the ſaid lord the king, upon and thro' the king's common highway aforeſaid going, paſſing, riding, and travelling, and againſt the peace of our ſaid lord the king, his crown and dignity.* Trem. 197.

Or,——*great quantity of dung, and other filth, by reaſon whereof, divers hurtful and unwholſome ſmells from the ſaid dung and other filth did then and there ariſe, and thereby the air there became, was, and is corrupted and infected*———

Or, ——— *cart loads of rubbiſh* ——— *by reaſon whereof the ſaid highway for the whole time aforeſaid was ſtraitned and obſtructed; ſo that the liege ſubjects of our ſaid lord the king could not ſo freely paſs and repaſs about their lawful buſineſs, thro' the ſaid common highway there, as they ought and have been accuſtomed*———

Indictment for ſtopping up a watercourſe, whereby the highway is overflowed.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of the pariſh of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *with force and arms, at the pariſh aforeſaid, in the county aforeſaid, a certain ancient watercourſe, adjoining to the king's common highway, within the ſame pariſh, leading from the town of* ——— *in the county aforeſaid, towards and unto* ———

with

with gravel and other materials, unlawfully and injuriously did obstruct and stop up; and the said watercourse, so as aforesaid obstructed and stopped up, from the said ——— day of ——— in the year aforesaid, until the day of the taking of this inquisition, at the parish aforesaid, in the county aforesaid, unlawfully and injuriously hath continued, and still doth continue, by reason whereof the rain and waters that were wont, and ought to flow and pass through the said watercourse, on the same day and year, and divers other days and times afterwards, between that day and the day of the taking of this inquisition, did overflow and remain, in the king's common highway aforesaid, and thereby the same was, and yet is greatly hurt and spoiled, so that the liege subjects of our said lord the king, through the same way, with their horses, coaches, carts, and carriages, then, and on the said other days and times, could not, nor yet can go, return, pass, ride, and labour, as they ought and were wont to do; to the great damage and common nusance of all the liege subjects of our said lord the king, through the same highway going, returning, passing, riding, and labouring, and against the peace of our said lord the king.

D. Presentment by a justice on his view.

Westmorland. A*T the general quarter sessions of the peace of our lord the king, held for the county of ——— aforesaid, at ——— in the said county, on* Monday *the ——— day of ——— in the ——— year of the reign of ——— before ——— esquires, and others their companions, justices of our said lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed,* Thomas Carleton, *esquire, one of the justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, by virtue of the statute in such case made and provided, upon his own proper knowledge doth present, That from the time whereof the memory of man is not to the contrary, there was, and yet is, a certain common and ancient king's highway, leading from the town of ——— in the county of ——— towards and unto ——— used for all the liege subjects of our said lord the king and his predecessors, with their horses, coaches, carts, and carriages, to go, return, pass, ride, and labour at their will; and that a certain part of the same king's common highway, commonly called ——— situate, lying, and being in the parish of ——— in the same county, containing in length ——— yards, and in breadth ——— feet, on the ——— day of ——— in the ——— year of the reign of ——— and continually afterward, until this present day, at the said parish of ——— in the county aforesaid, was and yet is very ruinous, miry, deep, broken, and in great decay for want of due reparation and amendment of the same, so that the liege subjects of our said lord the king, through the same way, with their horses, coaches, carts, and carriages, could not during the time aforesaid, nor yet can go, return,*

pass, ride, and labour as they ought and were wont to do, to the great damage and common nusance of all the liege subjects of our said lord the king, through the same highway going, returning, passing, riding, and labouring, and against the peace of our said lord king; and that the inhabitants of the parish of ——— aforesaid, in the county aforesaid, the common highway aforesaid (so as aforesaid being in decay) ought to repair and amend, when and so often as it shall be necessary. In testimony whereof, the said Thomas Carleton, *to these presents hath set his hand and seal, this ——— day of ——— in the year aforesaid.*

Highwaymen. See Robbery.

Here endeth the First Volume.

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